

BST Associates

6475 NE 183rd St
Kenmore, WA 98028
(425) 486-7722 (425) 486-2977 fax
bstassoc@seanet.com

September 30, 2010

Mr. Mark Larsen
Anchor QEA
1423 Third Avenue, Suite 300
Seattle, Washington 98101-2177

Re: Impact of the Proposed Terminal at Chinook Ventures on the Capacity of the Columbia River System

Dear Mr. Larsen:

BST Associates was retained to analyze the impact that development of a coal terminal in Longview, Washington would have on congestion in the Columbia River Shipping Channel.

We have evaluated this issue and find that the proposed development will likely have only a minor impact on the Columbia River System. The additional ship calls at the mouth of the bar and in the river channel will modestly increase the number of calls from existing levels. Improvements being undertaken by the U.S. Army Corps of Engineers will mitigate impacts on the anchorages.

The following letter presents the conclusions of this analysis.

Very Truly Yours,



Paul Sorensen,
Principal

Impact of the Proposed Terminal at Chinook Ventures on the Capacity of the Columbia River System

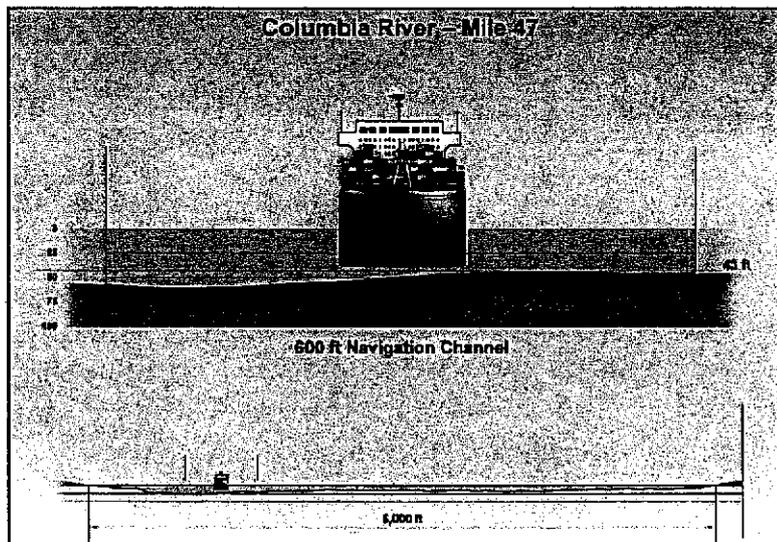
Proposed Terminal

The proposed terminal would be located at the Chinook Ventures property in Longview, at Columbia River mile 63. At full development, the facility will accommodate approximately around 5.0 million tons of coal exports with approximately 100 full outbound loads. The facility would also handle approximately 14 barges per year of cement imports.

Description of the Columbia River Channel

The Columbia River navigation channel begins at the Columbia River bar and continues five miles upriver at a depth of 55 feet and a width of 2,640 feet. After this point, the channel maintains a depth of 43 feet and a width of 600 feet for 106.55 miles to the Ports of Vancouver and Portland. (See Figure 1)

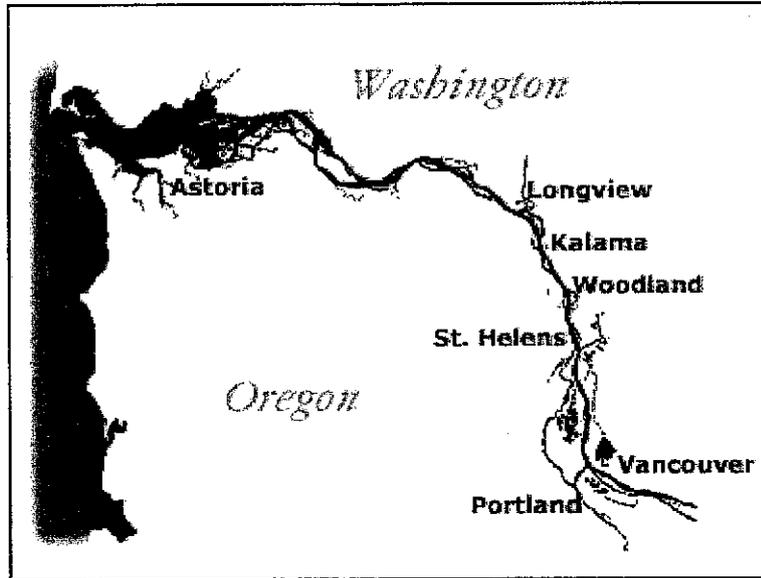
Figure 1: Cross Section of the Lower Columbia River Channel



As shown in Figure 2, the main ports in the Columbia River are located at:

- River Mile 12 (Port of Astoria)
- River Mile 65 (Port of Longview)
- River Mile 75 (Port of Kalama)
- River Mile 105 (Port of Vancouver)
- Willamette River (with access to Port of Portland terminals up to Willamette River Mile 12)

Figure 2: Map of Lower Columbia River Port System



Recent Trends in Ship & Port Traffic

Vessel Traffic

This section summarizes recent trends in vessel traffic.

Overall Traffic Trends

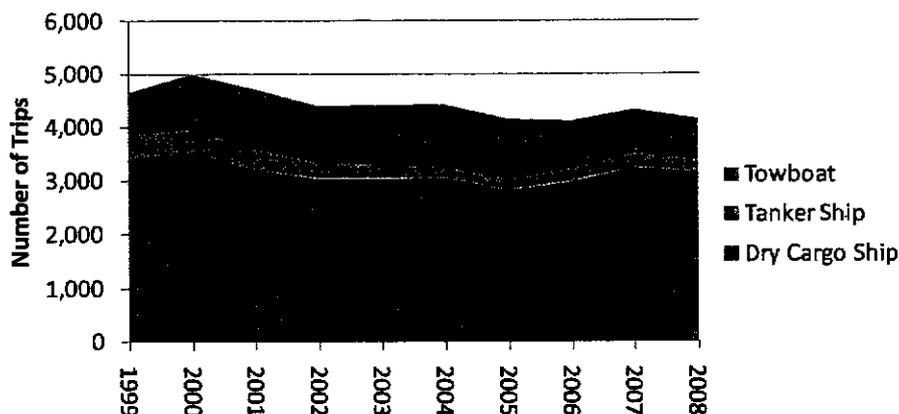
Cargo is carried into and out of the Columbia River in both ships and barges. The Corps of Engineers reports the number of cargo vessels that cross the Columbia River Bar, by type of vessel, including dry cargo ships, tanker ships, dry cargo barges, tanker barges, and towboats. Analysis of these statistics shows that a growing majority of the cargo vessels crossing the bar are dry cargo ships.

As shown in Figure 3, the number of cargo vessel trips decreased over the most recent decade (1999 through 2008, the last year of available data). From a peak of more than 5,000 cargo vessel crossings in 2000, the number dropped to approximately 4,150 in 2005, 2006, and 2008. Note that these trends intentionally omit the number of barges that crossed the bar; since barges are necessarily pulled by towboats, barge transits are included in towboat transits.

Because dry cargo ships account for the majority of cargo traffic on the Lower Columbia River, they have the most impact on channel congestion.

The number of dry cargo ships crossing the Columbia River Bar dropped approximately 10% between 1999 and 2008. Between 1999 and 2001 the number averaged 3,390 per year, but between 2004 and 2008 this dropped to 3,050. However, the share of total crossings accounted for by dry cargo ships grew from an average of less than 70% from 2001 through 2005 to nearly 76% in 2008.

Figure 3: Columbia River Crossing Trends by Type of Cargo Vessel



Columbia River Bar

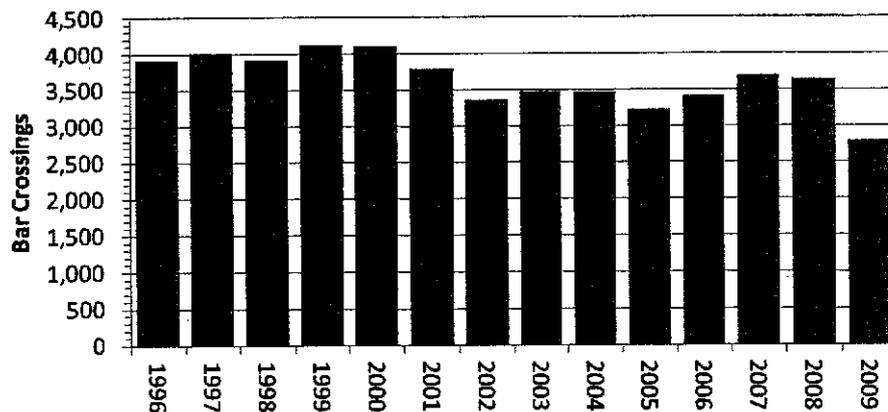
Pilotage across the Columbia River Bar and up or down the river is compulsory for U.S. vessels sailing under registry and for all foreign vessels, except foreign recreational or fishing vessels not more than 100 feet in length or 250 gross tons international. Pilotage is provided by the Columbia River Bar Pilots for the river entrance, from the open sea in at least 30 fathoms of water to the easternmost wharf at Astoria, Oregon.

Columbia River Bar Pilots board inbound vessels in the vicinity of the CR Buoy (Columbia River Entrance Buoy), and navigate ships beyond the Astoria-Megler Bridge, where vessels are turned over to a Columbia River Pilot.

According to data provided by the Oregon Pilot Commission, the number of vessel transits guided by bar pilots has not increased in more than a decade. In fact, between 2002 and 2008 the number of piloted transits averaged less than 3,500 per year, compared with an average of 4,000 per year between 1996 and 2000. These trends are consistent with those reported in the Corps of Engineers vessel trips data. In 2009, the number of transits dropped substantially, to less than 2,800, as a result of economic conditions.

The proposed terminal in Longview is projected to serve approximately 100 vessels per year. These 100 vessels represent 200 transits of the Columbia River Bar. These 200 transits represent a 7.1% increase over the depressed 2009 level, and 4.9% of the 1999 peak level.

Figure 4: Columbia River Piloted Bar Crossings



Source: Oregon Pilot Commission

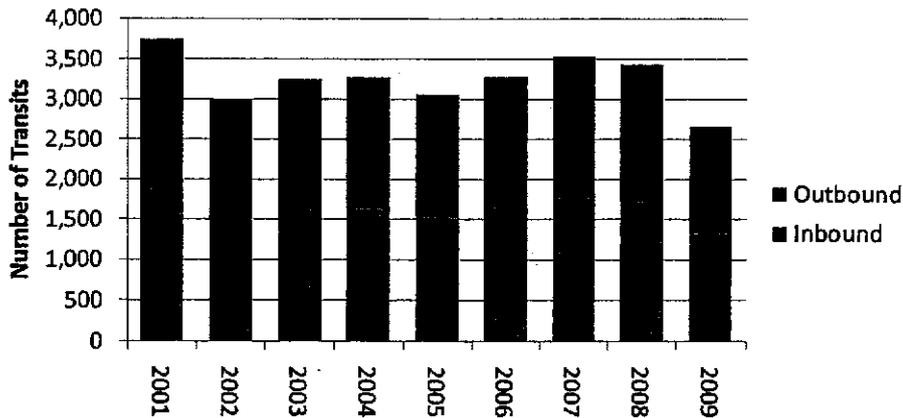
Columbia River Channel

The river pilots cover 105 nautical miles of the Columbia River from Astoria to the ports of Longview, Kalama, Vancouver and Portland. They also cover 13 miles of the Willamette River from its mouth to the seawall in downtown Portland. Between Astoria and the seawall in downtown Portland there are over 90 course changes, and the longest straight stretch of river is only about 2 miles in length.

Inbound vessels destined for all points upriver are boarded by a river pilot above the Astoria-Megler Bridge where they take over from the Columbia River Bar Pilots. A typical inbound transit will take between six and seven hours from when the river pilot boards in Astoria to when the ship arrives at the mouth of the Willamette River.

The trend in river channel pilots is similar to that of the bar pilots. With the exception of docks in Astoria, all other cargo terminals on the river require a ship to use a river pilot. The 200 vessel transits that the proposed facility may generate represent an increase of 5.3% to 7.5% over current traffic levels. (See Figure 5)

Figure 5: Columbia River Piloted Channel Transits



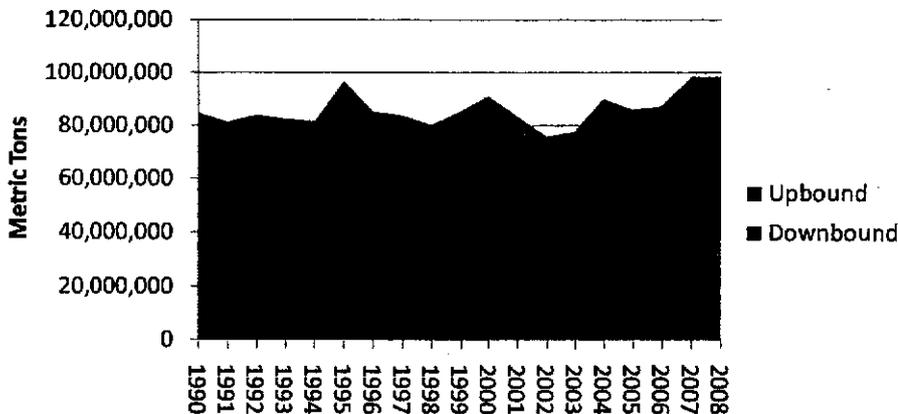
Source: Oregon Pilot Commission

Cargo Volume Trends

This section summarizes recent trends in cargo volumes on the Columbia River.

Over the past two decades the volume of cargo moving through the entrance to the Columbia River has grown by nearly 20%, and much of this growth was seen in the most recent years. (See Figure 6).

Figure 6: Cargo Volume at Columbia River Entrance



Source: U.S. Army Corps of Engineers Waterborne Commerce Statistics

Between 1990 and 1994 the annual volume of cargo averaged approximately 83 million metric tons, before jumping to 97 million tons during the record corn season in 1995. After 1995 the volume dropped back to 80 million in 1998, and then jumped back to 91 million in 2000. Following another decline in 2001 and 2002 the volume of cargo grew during most of the years between 2002 and 2008. The volumes of cargo moved through the Columbia River entrance in both 2007 and 2008 were the highest in the past two decades. U.S. Army Corps of Engineers Waterborne Commerce Statistics data is not yet available at the port level for 2009.

Downbound, or export, cargo has typically accounted for 75% to 80% of the total volume moved. With the exception of 1995, the years between 1990 and 2002 generally saw a decline in export volumes, due in large part to the shrinking forest products industry. Between 2002 and 2008, however, the volume of exports grew by more than 40%, largely due to increasing volumes of grain.

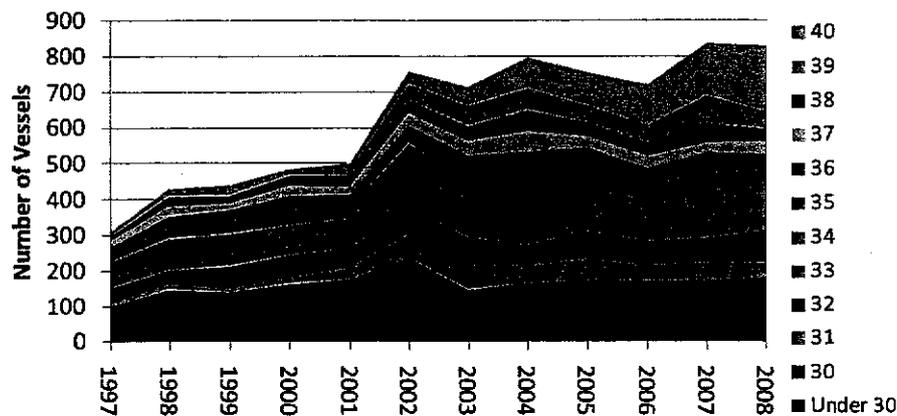
In contrast to downbound movements, inbound movements grew throughout the 1990's. This growth was especially strong from 1997 through 2000, when inbound volume grew from 19.5 million metric tons to 31.8 million metric tons. The recession of 2001-2002 quickly reversed this trend, and by 2003 inbound volume had dropped to 21.1 million metric tons. In both 2006 and 2007 inbound volume grew back to more than 27 million metric tons, but then dropped again due to the current recession.

Trends in Ship Size

The growth in cargo volume over the past decade has not been accompanied by a growth in ship movements, which indicates that the average load per ship has grown. There are several reasons for this, including: 1) the same ships now carry larger loads, and 2) larger ships are being used. Both of these trends are explored below.

First, it is likely that the same ships are now carrying larger loads, due to the deepening of the Columbia River Channel. This project to deepen the channel from 40 feet to 43 feet began in 2005, and is now essentially complete. Even though the project has taken several years to complete, shippers began to take advantage of the work done to date as early as 2005. As illustrated in Figure 7, the number of outbound bulk vessels sailing with a draft of 40 feet grew substantially between 2005 and 2008, the last year for which data is available.

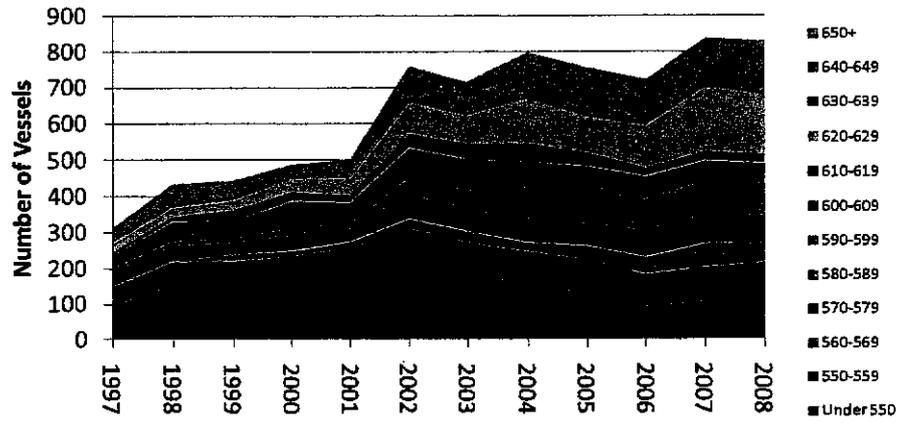
Figure 7: Outbound Draft (feet) of Bulk Vessels on Columbia River



Source: US Army Corps of Engineers Vessel Entrances and Clearances

Second, it is also clear that vessels are getting larger. As illustrated in Figure 8, bulk vessels 600 feet or longer accounted for just one-third of outbound ships in 1997, a proportion that held steady through 2001. In 2002 the number of bulk vessels 600 feet or longer began to grow, and by 2007 and 2008 this type of ship accounted for 46% of outbound bulk ships.

Figure 8: Length (feet) of Outbound Bulk Vessels on Columbia River



Source: US Army Corps of Engineers Vessel Entrances and Clearances, Clarkson Data

Impact Assessment

Areas of Potential Congestion

Based on conversations with maritime industry personnel, there appear to be three areas in which congestion could potentially occur:

- In the river channel,
- Crossing the Columbia River Bar, and
- At anchorages.

The potential for each of these is discussed below.

Impact on Congestion at Columbia River Bar.

Between 1996 and 2009 the Columbia Bar Pilots handled an average of between 7.6 and 11.3 vessels per day. With the addition of the 200 vessels from the proposed terminal, this would increase to between 8.2 and 11.8 vessels per day, or slightly more than one-half vessel per day.

A typical transit of the bar takes 1.5 hours. The bar pilots typically have eight pilots available at any time, so one pilot can handle multiple transits in a day. The addition of one-half vessel per day is well within the capacity of the bar pilots.

The existing number of transits also does not constrain the channel over the bar. Even at the potential level of 11.8 ships per day, each ship would have two hours to transit the channel. Since the channel is not limited to a single vessel at a time, the anticipated level of traffic is not an issue.

Impact on Congestion in the Columbia River Channel.

Between 2001 and 2009 the Columbia River Pilots handled an average of between 7.3 and 10.3 vessels per day. With the addition of the 200 vessels from the proposed terminal, this would increase to between 7.9 and 10.8 vessels per day, or an increase of slightly more than one-half vessel per day.

There are currently 42 river pilots, and there are typically 20 available on any day. With an average transit time of six to eight hours, pilots typically handle one move per day. The projected level of 10.8 vessels per day is well within the capacity of the river pilots.

In terms of physical constraints, the Port of Longview is 66 river miles from the Columbia River Bar, and approximately 50 miles from Astoria. With an average of less than six upbound and six downbound transits per day, there is little congestion in the channel.

This conclusion was confirmed in conversation with personnel from the U.S. Coast Guard, who stated that there is no limit to the number of ships that can use the channel. We interpret this to mean that the potential increase in the number of ships associated with this project will not create a constraint to the system.

Impact at Anchorages

According to conversations with the Columbia River pilots, the primary areas with the potential to see congestion are at the designated anchorages, which are placed in selected stretches of river by the Coast

Guard for anchorage. The majority of these anchorage areas do not provide buoys for tying the stern of vessels, and ship personnel must be vigilant to set anchor keeping in mind the potential for the vessel to swing into other vessels, the shoreline, and shallow water. Table 1 presents a list designated anchorages, arranged from Astoria upriver to Vancouver.

Table 1: Capacity of Designated Anchorages

Designated Anchorage	River Mile Range	Length of Area (Miles)	Normal Capacity
Astoria North Anchorage	14.0 – 17.8	2.5	6
Astoria South Anchorage	15.0 – 18.2	2.75	4
Longview Anchorage	64.0 – 66.0	1.5	5
Cottonwood Island Anchorage	66.7 – 71.2	4.5	13
Kalama Anchorage	73.2 – 76.2	3.0	6
Woodland Anchorage	83.6 – 84.3	0.75	3
Henrici Bar Anchorage	91.6 – 93.9	2.3	8
Lower Vancouver Anchorage	96.2 – 101.0	4.0	14
Kelley Point Anchorage	101.6 – 102.0	0.5	1
Upper Vancouver Anchorage	102.6 – 105.2	2.6	7
Total			67

Source: Columbia River Anchorage Guidelines

The two anchorages closest to Longview are the Longview Anchorage and the Cottonwood Island Anchorage. The Longview Anchorage is 1.5 miles long, and is located downstream of the Longview Bridge. The Cottonwood Island Anchorage is located upstream of the bridge, and extends for 4.5 miles. Under normal conditions the combined capacity of the two anchorages is 18 vessels. Both of these anchorages are normally limited to vessels less than 650 in length.

Anchoring guidelines for both the Longview and Cottonwood Island anchorage state that vessels are normally anchored facing upstream, but can be expected to swing on the tide during low water conditions and on the wind in slack water conditions.

Vessels that are not operated on fixed schedules often arrive at port before there is room to tie up at a terminal, in which case they must drop anchor to await their turn at the terminal. Most of the cargoes handled at terminals in the Longview area (including Longview, Kalama, and St. Helens) handle bulk and neo-bulk terminals such as grain, gypsum, logs, steel, wind turbine components, and others. The ships that handle these types of cargoes are typically not operated on fixed schedules, and as a result they must often wait at anchor.

The new grain terminal under construction at the Port of Longview is likely to increase the usage of the local anchorages. This new terminal is currently projected to export as much as 8 million tons of grain per year. At a projected average load of 40,000 tons, the number of ships calling at the terminal could average 200 per year. This number of ships makes it likely that one or more will be at anchorage while another is loading.

The ships calling at the proposed coal terminal will supply long-term contracts, and are anticipated to run on relatively regular schedules. This should limit the number of times and the amount of time vessels

must anchor. However, the terminal will likely generate some increase in the usage of the designated anchorages.

The Corps of Engineers is currently assessing the need for additional mooring buoys on the Columbia River, especially in the Longview area. These mooring buoys allow ships to tie off at the stern, preventing them from swinging at anchor. This decreases the amount of room need to tie up a ship. These buoys typically cost \$0.5 million each to install, with the cost split between the Corps of Engineers and local sponsors. The addition of several buoys in the Longview area will likely mitigate the increased demand for moorage generated by the new Longview grain terminal and the proposed coal terminal.

Conclusion

The additional vessel traffic generated by the proposed coal terminal should not cause congestion in the Columbia River Channel or at the Columbia River Bar. The proposed terminal may increase the demand for anchorage in the Longview area, but this increased demand for anchorage should be mitigated with the installation of mooring buoys.

ESTUARY HABITAT MOA

**MEMORANDUM OF AGREEMENT
ON COLUMBIA RIVER ESTUARY HABITAT ACTIONS
BETWEEN THE STATE OF WASHINGTON,
THE BONNEVILLE POWER ADMINISTRATION,
THE U.S. ARMY CORPS OF ENGINEERS, AND
THE U.S. BUREAU OF RECLAMATION**

SEPTEMBER 2009

WASHINGTON-ACTION AGENCY ESTUARY HABITAT MOA

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MEMORANDUM OF AGREEMENT
ON COLUMBIA RIVER ESTUARY HABITAT ACTIONS
BETWEEN THE STATE OF WASHINGTON, THE BONNEVILLE POWER
ADMINISTRATION, THE U.S. ARMY CORPS OF ENGINEERS, AND
THE U.S. BUREAU OF RECLAMATION

I. INTRODUCTION

This agreement for estuary habitat actions (“Estuary MOA” or “Agreement”) confirms joint commitments of the Bonneville Power Administration (“BPA”), the U.S. Army Corps of Engineers (“Corps”) the U.S. Bureau of Reclamation (“Reclamation”) (collectively, “Action Agencies”) and the State of Washington (“Washington” or “State”) (collectively, the “Parties”) regarding habitat actions to be undertaken to conserve salmon and steelhead through improvement of conditions in the Columbia River estuary, consistent with the Lower Columbia River Recovery plan,¹ the Estuary Recovery Plan Module, and the 2008 Biological Opinions (“BiOps”) for the Federal Columbia River Power System (“FCRPS”)² and Upper Snake Projects (“Upper Snake”),³ and the Harvest BiOp.⁴

The Parties have also initiated good faith negotiations of a comprehensive long-term Memorandum of Agreement (“long-term Agreement” or “long-term MOA”) to address issues associated with the effects of the FCRPS and Reclamation’s Upper Snake Projects, on the fish and wildlife resources of the Columbia River Basin, including implementation of 2008 Biological Opinion for the FCRPS and Upper Snake Projects. This Estuary MOA is not intended to constrain or otherwise limit the scope of Parties’ negotiations concerning a long-term Agreement. In particular, the Parties recognize that the Action Agencies’ commitments in this Estuary MOA are part of their broader commitments to implement all-H actions to mitigate federal hydropower effects, consistent with the 2008 BiOps under the Endangered Species Act (“ESA”) and the Pacific Northwest Electric Power Planning and Conservation Act (“Northwest Power Act” or “NPA”).

¹ Lower Columbia River Salmon Recovery and Fish and Wildlife Subbasin Plan, issued by the Lower Columbia Fish Recovery Board on December 15, 2004, and adopted as an interim recovery plan for the Washington portion of the ESU recovery plan in February 2006 by NOAA Fisheries.

² For purposes of this Agreement, the FCRPS comprises 14 Federal multipurpose hydropower projects. The 12 projects operated and maintained by the Corps are: Bonneville, the Dalles, John Day, McNary, Chief Joseph, Albeni Falls, Libby, Ice Harbor, Lower Monumental, Little Goose, Lower Granite, and Dworshak dams. Reclamation operates and maintains the following FCRPS projects: Hungry Horse Project and Columbia Basin Project, which includes Grand Coulee Dam.

³ For purposes of this Agreement, the Upper Snake River Projects (Upper Snake) are Minidoka, Palisades, Michaud Flats, Ririe, Little Wood River, Boise, Lucky Peak, Mann Creek, Owyhee, Vale, Burnt River and Baker.

⁴ Consultation on Treaty Indian and Non-Indian Fisheries in the Columbia River Basin Subject to the 2008-2017 *U.S. v. Oregon* Management Agreement, issued by NOAA Fisheries on May 5, 2008.

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II. BIOLOGICAL OPINION COMMITMENTS

The Parties reaffirm their position that the FCRPS and Upper Snake BiOps (including hydro operation, configuration, and water management provisions) satisfy ESA requirements during their terms. This includes the overarching hydro performance standards, supported by adaptive management, as set out in the BiOps and Biological Assessment.⁵

In implementing this Estuary MOA, the Parties commit to collaborate within the framework of the FCRPS BiOp. This includes annual reporting and comprehensive evaluations (including consideration of population and evolutionarily significant unit [“ESU”] status) in 2013 and 2016, all-H diagnosis, and identification of modified actions and contingencies.

III. ESTUARY HABITAT COMMITMENTS

A. Biological Value of Estuary Habitat Projects

The Parties agree that projects to protect, improve, and restore estuary habitat will yield important biological benefits. The Columbia River estuary represents one of three major environments supporting the life cycle of Columbia Basin salmon and steelhead. All of these salmon and steelhead stocks spend time in the estuary before migrating to the ocean. The Columbia River estuary has been significantly altered and degraded by human activities, and innumerable scientific studies and communications from notable regional scientists confirm that protection and restoration of this habitat will yield biological benefits for all listed salmonids in the Columbia River Basin. In addition, by improving ecological conditions and processes, the estuary habitat actions under this Agreement will also benefit numerous other fish and wildlife species that rely on estuary habitat at some point in their lifecycle. This includes non-listed salmon and steelhead, smelt (eulachon, whitebait, surf, night, and longfin), sea-run cutthroat trout, Pacific lamprey, and green and white sturgeon, among others. Enhancement of wetlands and riparian areas also provide important habitat for a variety of birds, including bald eagle, peregrine falcon and a variety of waterfowl species.

The actions being undertaken by the Parties in the estuary (including on the ground actions and research, monitoring and evaluation) support the estimated ESU survival benefits of 6% and 9% (for stream type and ocean type fish, respectively) over the term of the FCRPS BiOp. Although this Estuary MOA is not required under the 2008 FCRPS

⁵ The hydro performance standards referenced here, as well as hydro targets and metrics, are described in the Main Report, Section 2.1.2.2 of the Action Agencies’ August 2007 FCRPS Biological Assessment (FCRPS BA), pages 2-3 through 2-6, and the FCRPS BiOp at RM&E Strategy 2 (Hydro) and RPA 52 (pages 72-76 of 98). The adaptive management referenced here, including reporting and diagnosis, are described in Section 2.1 of the FCRPS BA, with population/ESU progress monitoring addressed in RM&E Strategy 1 (Status Monitoring) and RPAs 50 and 51 (pages 69-71 of 98).

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BiOp, the additional \$4.5 million annually of funding and actions provided under this Agreement will aid in the achievement of these benefits. The Parties are committed to using the estuary research, monitoring, and evaluation actions in the BiOp, in conjunction with the 2013 and 2016 comprehensive evaluations, to confirm the achievement of these benefits by 2018 within the framework of the FCRPS BiOp.

B. Overall Increased Estuary Commitments--\$40.5 million

As a result of the mutual commitments between BPA, the Corps, and Washington described below, the Action Agencies will be providing an increase in funding for all estuary habitat actions of approximately \$40.5 million over the nine year term of this MOA, summarized as follows:

	Pre-Estuary MOA			With this Estuary MOA			
Annual Planning Budgets (\$ million)							
	Habitat	RM&E	Estuary Total	Habitat	RM&E	Estuary Total	Increased Habitat Funding
BPA	3.5			5.3			1.8
Corps	2.0			4.7			2.7
BPA & Corps Combined		6.6			6.6		
Sub-Total	5.5	6.6	12.1	10.0	6.6	16.6	4.5
Nine-Year Total (\$ million)							
BPA & Corps Combined	49.5	59.4	108.9	90.0	59.4	149.4	40.5

Actual dollars figures will be higher, because these figures do not include the 2.5% inflation adjustment for BPA commitments.

This MOA addresses the additional funding from BPA and the Corps for estuary habitat projects of \$4.5 million annually committed to Washington. The remaining \$5.5 million combined BPA and Corps commitments for estuary habitat projects, which began prior to this MOA, will continue to be utilized with other governmental and non-governmental entities in Oregon and Washington, including the Lower Columbia River Estuary Partnership (“LCREP”). The \$6.6 million annually for estuary research, monitoring, and evaluation (“RM&E”) will similarly be utilized with governmental and non-governmental entities.⁶

⁶ There is an additional \$1.2 million (annual) from system-wide RM&E activities benefitting the estuary that is not included in the table above; RM&E amounts may vary to reflect changes in scope over time.

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Any funds provided to Washington or the Estuary Partnership through the stimulus packages under the American Recovery and Reinvestment Act of 2009 or other subsequent Acts, may provide additional biological benefits, but will not affect the funding commitments in this Agreement.

C. Funding for Estuary Habitat Improvements

C.1 General Principles:

- For purposes of this Agreement, the Columbia River estuary is defined as the area from the mouth of the Columbia River, including the plume, upstream to the limit of tidal influence (including tidally influenced areas of tributaries) at Bonneville Dam at River Mile 146.
- Estuary habitat projects funded under this Estuary MOA are linked to biological benefits based on limiting factors for ESA-listed fish at the ESU level. Estimated survival benefits based on habitat improvements will be determined for each project utilizing the process and methodology specified in the FCRPS BiOp. See Attachments 1 and 2. (Attachment 1 is the spreadsheet showing projects and estimated planning budgets; Attachment 2 provides brief project narratives, ESUs and limiting factors being addressed, and estimated survival benefits of the actions).
- Washington, acting through the Washington Department of Fish and Wildlife (“WDFW”), will either sponsor or coordinate the projects or actions funded under this Agreement for the benefit of salmon and steelhead in support of the FCRPS BiOp, consistent with the Northwest Power and Conservation Council’s (“Council”) Fish and Wildlife Program implementation in Washington. WDFW will coordinate the projects with the Lower Columbia Fish Recovery Board (“LCFRB”), and LCREP (which includes the State of Oregon), and other estuary action partners of the Action Agencies.
- The Parties endorse the National Oceanic and Atmospheric Administration (“NOAA”)-modified LCREP ecosystem criteria⁷ for estuary habitat projects (Attachment 3), and will apply these criteria (subject to any subsequent modifications made by NOAA in coordination with LCREP to reflect results of RM&E) in the process of selecting projects for this MOA.
- Projects funded under this Agreement are consistent with subbasin plans now included in the Council’s Program and ESA recovery plans. More specific linkages to these plans will be documented as a function of the BPA contracting process.
- Projects may be modified by mutual agreement over time based on biological priorities, feasibility, science review comments, or based on results in habitat and survival improvements.

⁷ NOAA modified the broader LCREP ecosystem criteria to more specifically address ESA-listed salmon and steelhead.

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- Parties agree to report the results of implementation of this MOA through the annual reporting process under the FCRPS BiOp.
- The Parties acknowledge that there may be multiple projects in various phases of planning, design, and construction in any given year. The Parties agree to meet annually to discuss which projects will receive funding in that fiscal year for the Corps projects addressed in this MOA.

C.2 BPA Funding for Estuary Habitat Actions

- New Funding: BPA is committing to an increase of \$1.8 million per year of estuary habitat funding beginning in fiscal year 2010. These funds will be utilized by Washington to:
 - Provide the cost share for projects to be submitted to the Corps pursuant to the Water Resource Development Act of 2000 (“WRDA 2000”) Section 536, Lower Columbia River and Tillamook Bay Ecosystem Restoration, Oregon and Washington (see description below);
 - Provide cost-share for restoration of shoreline and shallow water habitat to benefit salmon and steelhead in the estuary under the Corps’ Beneficial Use of Dredge Material program;
 - Address any planning and development and operation and maintenance costs for Corps projects addressed in this MOA; and
 - Fund other estuary habitat projects as mutually agreed.
- The BPA funding will be available for (in priority order):
 - Non-federal cost share for Corps projects under this MOA;
 - To cover operation O&M costs (O&M) for Corps projects under this MOA; and
 - Additional estuary habitat projects.
- Up to 20% percent of the BPA funds will be available per year for “transaction costs” which means costs to develop proposed projects, identify willing project sponsors, coordinate and develop the basic elements of these proposals, initiate and respond to science review and otherwise plan for project implementation.
- In order to reflect the heavier emphasis on initial planning steps in the first two years of the MOA, BPA will execute an umbrella contract with Washington’s designated implementing agencies, providing up to \$250 thousand each year for transaction costs.
 - Upon completion of planning, development and execution of partnering agreements for estuary projects for implementation under this Agreement, any additional transaction costs (if any) will transition from the umbrella contract to the Corps projects addressed in this Agreement.
 - The Parties will cooperate with the Corps to ensure that costs incurred prior to the start of the Corps’ processes are to perform tasks needed to develop a proposal that addresses provisions of the Corps’ authorities.

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- The Parties also agree to cooperate to minimize these transaction costs to maximize available funds for the non-federal cost share and leveraging Corps appropriations for Corps projects under this Agreement.
- Of the \$1.8 million commitment, \$1.3 million is based on the Corps' commitment, below, to assume some of BPA's estuary RM&E commitments. The remaining \$0.5 million commitment will be added to the Fish and Wildlife Program budget. However, the Parties share a preference that the 0.5 million per year will be funded from within BPA's existing Fish and Wildlife Program, and will cooperate in good faith to seek that outcome.

C.3. Corps Funding for Estuary Habitat Actions

- Under this Agreement the Corps will seek a \$2.7 million annual increase in federal appropriations for the Corps 536 Program. This is based on the increase from BPA available to the State of Washington to cost share in increased estuary habitat work.⁸ Two existing Corps authorities to create estuarine habitat are Section 536 of the WRDA 2000 ("536 Program") and Section 204 of the WRDA of 1992 (Beneficial Use of Dredge Material)("Section 204 Program").
- Under Section 536 (WRDA 2000), the Corps can construct ecosystem restoration projects for the lower Columbia River estuary to protect, monitor and restore fish habitat. This authority requires a non-Federal cost share sponsorship, in which the sponsor pays 35% and the Corps is responsible for 65% of the total costs to plan and construct the projects. The non-Federal sponsor (or local sponsor) is responsible for all lands, easement and rights-of-ways, of which value will be credited toward the local (non-Federal) cost- share. In addition, the local sponsor is responsible for all future operation and maintenance costs. (See Attachment 4 for more details of this authority and a flow chart for the Section 536 process.)
- A feasibility study to formulate an estuary habitat project under the Corps' 536 Program is cost shared equally (50 percent/50 percent) between the Corps of Engineers and the non-Federal sponsor. One hundred percent of the non-Federal share may be contributed as in-kind products or services. The feasibility study results in recommendations for the design and construction of the habitat actions, and identifies the responsibilities of the Federal and non-Federal sponsor during design and construction.

⁸ Corps funds are subject to annual appropriations. The Corps, through its Northwestern Division, will request and work to obtain appropriations sufficient to fund its commitments under this Estuary MOA, and will keep the Parties apprised of the status of its appropriations request. The other Parties will support the Corps' efforts to obtain this funding. BPA will maintain its \$1.8 million estuary habitat commitment even if the increased appropriations request is not immediately successful, provided the Corps continues to use best efforts to obtain the increased appropriations.

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- Under Section 204 (WRDA 1992), the Corps can cost share with willing local sponsors the incremental costs above the least cost Federal standard to create estuarine habitat (beneficial use) from material dredged for a federal navigation project. Incremental costs could result from increased distances to disposal site, requiring different equipment or special handling/rehandling techniques or additional features to help stabilize dredged material at a placement site. The Corps will pay 75% of the incremental costs and the sponsor is required to pay the remaining 25%.
- The Corps will consult with Washington to ensure that Corps projects and related RM&E implemented under these authorities will contribute to the objectives of this Agreement, including projects (or types of projects) identified for funding.

C.4. Estuary RM&E Funding.

- The Corps and BPA currently fund approximately \$6.6 million annually of RM&E in the estuary to support implementation of the FCRPS BiOp. (*See II.B. above*).
- As part of its commitments to implement the Reasonable and Prudent Alternative (RPA) actions of the 2008 FCRPS BiOp, the Corps and BPA are funding RM&E (RPA actions 58- 61). Under this Estuary MOA, the Corps agrees to fund up to \$1.3 million annually of the on-going RM&E work through its Columbia River Fish Mitigation Project (“CRFM”) starting in Fiscal Year 2010, through the duration of this MOA. This work will include the study of “Historic Habitat Food Web Linkages” (NOAA and others) and the “Ecology of Juvenile Salmon in Tidal Freshwater in the Vicinity of the Sandy River Delta” (Pacific Northwest National Lab).
- In regional coordination processes, WDFW will support these estuary RM&E actions for priority funding under the CRFM.
- This shift in funding will not change the commitment by the Corps and BPA to implement the estuary RM&E. Any changes in scope for the two RM&E projects identified above will be coordinated and mutually agreed by the Corps and BPA.
- With the Corps’ commitment to fund through CRFM up to \$1.3 million in RM&E commitments that had been provided by BPA, BPA will provide an equivalent amount, \$1.3 million, to Washington to serve as the matching cost share from Washington or other entities in Washington (as project sponsor) to the Corps, for habitat work in the estuary.

C.5. Contingency

If, despite its best efforts, Washington does not identify sufficient viable estuary habitat projects to utilize all 536 Program funds contemplated in this Estuary MOA for two consecutive years, the Parties agree that the Corps and BPA may seek additional project sponsors, for projects in Washington or Oregon, to utilize the available appropriations and the ‘freed’ cost share funds provided by BPA.

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D. General Provisions For All Projects

D.1. All projects funded pursuant to this Agreement shall:

- Be consistent with the Council's Program (including sub-basin plans), as amended, otherwise compliant with the NPA's science and other review processes; applicable ESA recovery plans; and applicable data management protocols adopted by the Action Agencies.
- Be consistent with BPA's then applicable policies, including but not limited to BPA's *in lieu* policy and BPA's capital policy.
- Report results annually (including ongoing agreed upon monitoring and evaluation) via PISCES and/or other appropriate databases.
- Remain in substantive compliance with any applicable implementing project contract terms, including but not limited to 536 Program or Section 204 WRDA partnering agreements.
- Be subject to any necessary permits and approvals for actions on federal lands.

D.2. In addition, Washington shall:

- Provide estimated habitat and survival benefits from the project to listed salmon and steelhead based on key limiting factors and determined using the process and methodology specified in RPA 37 of the FCRPS BiOp, in cooperation with the Corps and BPA;
- Prior to implementation, bring projects through the expert regional technical group process prescribed in RPA 37 to confirm projected benefits and, in the event that there are differences between the results of the expert panel process and Washington's original benefit estimate, the Parties will reconcile the difference and develop final benefits through technical collaboration;⁹ and
- Support and defend these estimates of habitat and survival benefits with available and relevant scientific, policy, and legal information.

D.3. The Parties will coordinate their RM&E projects with each other and with regional RM&E processes (particularly those needed to ensure consistency with the FCRPS BiOp RM&E framework), as appropriate and agreed to among the Parties.

D.4. For actions on federal lands, Washington will consult with the federal land managers, and discuss necessary permits and approvals.

D.5. For projects where the State of Washington is a sponsor, before project approval, the Parties will meet to discuss and address projected operation and maintenance requirements and any potential liability exposure arising from project implementation. Operation and maintenance costs may be paid for as agreed by the Parties, on a project-

⁹ BPA and the Corps will provide assistance to WDFW for technical support in the expert regional technical group process, on request.

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by-project basis, from the BPA portion of the funding in this MOA. Risk management issues will also be discussed and addressed by the Parties as needed, prior to project selection.

E. Council and ISRP Review

E.1. As described in Section III.C.1, above, projects funded by BPA pursuant to this Agreement shall be consistent with the Council's Program and follow the NPA's science and other review processes.

E.2. The Parties recognize that the Council's Program is a maturing program, which through several decades of implementation has established a continuing framework for mitigating the impacts of hydroelectric development in the Columbia River Basin. The Parties acknowledge that nothing in this Agreement precludes any Party from making recommendations to the Council about modifications to the Council or ISRP review processes to facilitate project implementation under this Agreement or generally. The guidelines for ISRP review developed by the Council in consultation with the ISRP, BPA, and the Accord parties, for review of the Columbia Basin Fish Accords projects will be used for review of the projects under this Estuary MOA. Washington will ensure that any needed ISRP science review is timely and occurs before a project partnering agreement is drafted to implement a project under the Corps' Programs. If the ISRP review process cannot accommodate the timing requirements for Corps projects funded under this Estuary MOA, the Parties may propose a programmatic approach for ISRP review to the Council.

F. Replacement Projects

F.1. General Principles:

- The Parties agree that a project identified in this Agreement may not ultimately be implemented or completed due to a variety of possible factors, including but not limited to:
 - Problems arising during regulatory compliance (e.g., ESA consultation, National Environmental Policy Act ("NEPA"), the (Washington) State Environmental Policy Act ("SEPA"), National Historic Preservation Act ("NHPA") review, Clean Water Act permit compliance, etc);
 - The project does not meet BPA's *in lieu* policy or does not meet BPA's capital policy;
 - New information regarding the biological benefits of the project (e.g., new information indicating a different implementation action is of higher priority, or monitoring or evaluation indicates the project is not producing its anticipated benefits);
 - Changed circumstances (e.g., completion of the original project or inability to implement the project due to environmental conditions); or

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- Substantive non-compliance with the implementing contract, including but not limited to the Corps' 536 Program or Section 204 WRDA partnering agreements.
- Should a project not be implemented due to one or more of the above factors, the Action Agency and WDFW, in consultation with the LCFRB, LCREP, NOAA Fisheries, and other estuary action partners of the Action Agencies, will promptly negotiate a replacement project.

F.2. Replacement Projects:

- A replacement project(s) should be the same or similar to the project(s) it replaces in terms of target species, limiting factor, mitigation approach, geographic area and/or subbasin and biological benefits.
- A replacement project(s) should have the same or similar planning budget as the project(s) it replaces (less any expenditures made for the original project(s)). Such budget must address carry-forward funding whose amount and calculation will be subject to the Parties' mutual agreement.

G. Adaptive Management

In the implementation of this MOA, the Parties will work together on an adaptive management basis, consistent with the FCRPS BA and the collaborative framework of the FCRPS BiOp, including but not limited to the following:

G.1. Regular Feedback and Review

The Parties will meet at least annually to review implementation of this Estuary MOA and its progress, and to discuss actions needed to maintain or improve steady implementation and to attain the predicted biological benefits of the Agreement.

G.2. New Information/Changed Circumstances

In addition to project-specific adaptation through replacement project(s) described above, the Parties may mutually agree to adaptively manage this shared implementation portfolio on a more programmatic scale based on new information or changed circumstances. For example, if during implementation of this MOA, new information or changed circumstances indicate the habitat focus of this MOA is no longer the most effective type of activity to meet the estuary performance standards the Parties can, if mutually agreed, shift the BPA commitments in this MOA to a different programmatic approach.

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G.3. Additional Work and Funding

As part of the comprehensive evaluations in 2013 and 2016, the Parties will review results under this Agreement and will determine whether additional work is needed to achieve ESU survival benefits of 6% and 9% (for stream type and ocean type Chinook, respectively) within the framework of the FCRPS BiOp. Based on this review, if additional work is needed to achieve these benefits, the Parties will discuss whether the Action Agencies should seek and commit additional actions or funding.

H. Inflation and Budget Matters

H.1. Inflation

Beginning in fiscal year 2011, BPA will provide an annual inflation adjustment of 2.5 percent. In implementing this provision, BPA will add the inflation adjustment, compounded, to expense budgets beginning in 2011, but will not subsequently adjust project budgets as the schedule of that work changes.

H.2. Expense Planning versus Actuals, and Project-Year Budgets

H.2.a. BPA will plan to contract at the full amounts described in this Estuary MOA. Due to a variety of factors outside of BPA's control, however, BPA's actual expenditures may be less. (Historically, the average difference between BPA's planned expenditures for implementing the expense component of its Council Fish and Wildlife Program, and BPA's actual spending—what BPA is invoiced and pays under individual implementing contracts—is about 7%; that is, BPA plans to expend 100 dollars, but it will be invoiced and pay 93 dollars). When under-spending occurs, funding can be made available in other years and for other projects by mutual agreement per Section III.H.3, below. If total BPA expense spending under this Agreement is less than 93% of the planned amount in any one year, BPA, the Corps, and Washington will meet to discuss possible actions to remove the impediments to achieving the Agreement's full implementation and spending.

H.2.b. BPA's financial commitments and project budgets identified in Attachment 1 are described in fiscal-year terms, but BPA fish and wildlife program contracts are not necessarily aligned to the fiscal year (FY). As a result, the expense budgets in Attachment 1 will be interpreted as project-year (PY) budgets. This means that the project (as implemented through a BPA-issued contract or contracts) can start anytime during the federal fiscal year (Oct 1 – Sep. 30) and use that PY budget for the full implementation period (usually one year).

H.3. Budget Management

Washington may request an adjustment of the PY budget (through requests for transfers, reschedules, or preschedules) for any individual project so long as the Agreement level

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planning budget--the roll up of the individual project-year budgets--does not exceed 120% of the original planning budgets after the inflation adjustment (see Attachment 1).

Transfers of budgets between projects may be allowed through mutual agreement so long as the transfer is consistent with the Agreement-level budget cap (above), and BPA and Washington mutually agree on the revised focus. (BPA will not likely agree to a budget transfer that moves dollars away from habitat work or other on-the-ground work.)

If Washington is able to complete work below a project budget, leaving obligated funds unspent for a project when the contract is closed, those funds will be made available to Washington for re-allocation if mutually agreed by BPA. Through mutual agreement those unspent funds may be rescheduled to the same project or transferred to another Agreement project so long as the adjustment is consistent with the Agreement-level budget cap.

In addition, BPA and Washington may, by mutual agreement, adjust the 120% cap for those projects that involve the acquisition of interests in land or water from willing sellers, to accommodate the uncertainties of negotiations with sellers. In order to exceed the 120 percent cap for such circumstances, Washington shall give BPA at least six months notice of the potential need for such an extension, and provided further that BPA may decline to make the adjustment to avoid a "bow wave" of spending in any given year, or towards the end of this MOA's terms, or on any other reasonable ground, including consideration of how any such adjustments would affect cost-share opportunities with the Corps' 536 Program under this MOA.

H.4. Costs of environmental and regulatory reviews

In order to implement the projects identified in this Agreement, BPA, the Corps and/or Washington may need to undertake a variety of environmental and regulatory reviews, including, but not limited to those under NEPA, the NHPA, the ESA, and the Clean Water Act. Unless otherwise mutually agreed, the costs of these review processes will be taken out of the funding commitments of this Agreement, regardless of whether Washington or BPA undertakes the work. Thus, for example, if an Environmental Assessment or an Environmental Impact Statement under NEPA is needed for one or more projects, the costs of that work will be subtracted from the relevant budget under this Agreement. The Parties agree to coordinate in advance on budgeting for these environmental and regulatory reviews.

IV. LITIGATION, GOOD FAITH, DISPUTE RESOLUTION AND OTHER PROVISIONS

A. Effects on Litigation

The Parties will discuss the appropriate means of alerting the district court in *NWF v. NMFS* of this Agreement (if needed) and will undertake any agreed-upon approach.

B. Good Faith Implementation and Support

Best effort good-faith implementation and support of this Estuary MOA is the general duty to which all Parties agree to be bound. Nonetheless, the Parties understand that from time to time questions or concerns may arise regarding a Party's compliance with the terms of this Agreement. In furtherance of the continuing duty of good faith, each Party agrees that the following specific actions or efforts will be carried out:

B.1. On a continuing basis, each Party will take steps to ensure that all levels of its government/institution is made aware of the existence of this Agreement and the specific commitments and obligations herein, and emphasize the importance of meeting them.

B.2. Each Party will designate a person to be initially and chiefly responsible for coordinating internal questions regarding compliance with the Agreement.

B.3. Each Party will make best efforts to consult with other Parties prior to taking any action that could reasonably be interpreted as inconsistent with any part of this Agreement. To assist in this, the Parties will designate initial contact points. The formality and nature of the consultation will likely vary depending circumstances. The initial contact points are initially charged with attempting to agree on what form of consultation is required. In some instances, the contact between initial contact points may suffice for the consultation, while in others, they may need to recommend additional steps. The Parties agree that consultations should be as informal and with the least amount of process necessary to ensure that the Parties are fulfilling the good-faith obligation to implement and support the Agreement.

B.4. If a Party believes that another Party has taken action that is contrary to the terms of the Agreement, or may take such action, it has the option of a raising a point of concern with other Parties asking for a consultation to clarify or redress the matter. The Parties will endeavor to agree upon any actions that may be required to redress the point of concern. If after raising a point of concern and having a consultation the Parties are unable to agree that the matter has been satisfactorily resolved, any Party may take remedial actions as it deems appropriate, so long as those remedial actions do not violate the terms of the Agreement.

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**C. Changed Circumstances, Renegotiation/Modification,
Withdrawal**

C.1. The Parties acknowledge that NOAA Fisheries has issued a final BiOp for the FCRPS as of May 5, 2008, and that there is litigation regarding this BiOp.

C.2. If any court, regardless of appeal, finds that the FCRPS or the Upper Snake Project BiOp or agency action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and subsequently remands either BiOp to NOAA Fisheries, this Agreement shall remain in force, subject to the provisions of this Section IV.C.2. If any court, regardless of appeal, finds that either BiOp or agency action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, the Parties will seek to preserve this Estuary MOA, and will meet promptly to determine the appropriate response as described below:

(a) In the event that a portion(s) of this Agreement is in direct conflict with the court order or resulting amended BiOp, the Parties shall meet and agree on an appropriate amendment to that section, or, if such amendment is not possible under the terms of the court order or resulting amended BiOp, then a substitute provision shall be negotiated by the Parties.

(b) If the court-ordered FCRPS operations or resulting amended BiOp require additional actions that are either financially material to an Action Agency or that materially constrain the Corps or Reclamation from meeting FCRPS purposes, Section IV.C.3 shall apply.

(c) The Parties will participate in any court-ordered process or remand consultation in concert with Sections IV.B and IV.C.

(d) The Parties intend that determinations of materiality will only be made in cases of great consequence.

C.3. In the event of the occurrence of any of the material effects in Section C.2, or in the event of material non-compliance with the Agreement not resolved by dispute resolution, the affected Party or Parties shall notify the other Parties immediately and identify why the event is considered material. The Parties shall utilize dispute resolution if there is a disagreement as to whether the event is material. In addition, prior to any withdrawal, the Parties shall first make a good faith effort to renegotiate mutually agreeable modifications to the Agreement. If renegotiation is not successful, the affected Party may notify the other Parties in writing of its intent to withdraw by a date certain. If renegotiation is not successful, at the time the withdrawal is effective, all funding commitments and/or other covenants made by the withdrawing Party cease, and the withdrawing Party shall have no further rights or obligations pursuant to the Agreement. A withdrawing Party reserves any existing legal rights under applicable statutes, including all arguments and defenses,

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and this Agreement cannot be used as an admission or evidence in support of or against any such argument or defense.

C.4. The provisions of this Agreement authorizing renegotiation, dispute resolution, withdrawal, or challenge in appropriate forums provide the sole remedies available to the Parties for remedying changed circumstances or disputes arising out of or relating to implementation of this Agreement.

C.5. Any Party may withdraw or request renegotiation for reasons other than those enumerated above subject, however, to the provisions in Section IV.C.3.

C.6. If one Party withdraws from the Agreement, any other Party has the option to withdraw as well, with prior notice.

C.7. Savings. Notwithstanding Section IV.C.3, in the event of withdrawal, BPA will continue providing funding for projects necessary for support of FCRPS BiOp commitments (as determined by the Action Agencies), and may provide funding for other on-going projects or programs that the Parties mutually agree are important to continue.

D. Dispute Resolution

D.1. Negotiation

I.a. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to implementation of this Estuary MOA in accordance with this section prior to administrative, judicial or other formal dispute resolution procedures. The purpose of this Section IV.D.1 is to provide the Parties an opportunity to fully and candidly discuss and resolve disputes without the expense, risk and delay of a formal dispute resolution.

I.b. If the Parties are unable to resolve the dispute through informal dispute resolution, then the dispute shall be elevated to negotiating between executives and/or officials who have authority to settle the controversy and who are at a higher level of management than the person with direct responsibility for administration of this Agreement. All reasonable requests for information made by one Party to the other will be honored, with the Action Agencies treating “reasonable” within the context of what would be released under the Freedom of Information Act.

I.c. In the event a dispute over material non-compliance with the Agreement has not been resolved by negotiation, the affected Party may seek to withdraw, without further renegotiation, in accordance with Section IV.C.3, and may pursue any other remedy provided by law.

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D.2. Mediation

In the event the dispute has not been resolved by negotiation as provided herein, the disputing Parties may agree to participate in mediation, using a mutually agreed upon mediator. To the extent that the disputing Parties seeking mediation do not already include all Parties to this Agreement, the disputing Parties shall notify the other Parties to this Agreement of the mediation. The mediator will not render a decision, but will assist the disputing Parties in reaching a mutually satisfactory agreement. The disputing Parties agree to share equally the costs of the mediation.

E. Modification

The Parties by mutual agreement may modify the terms of this Estuary MOA. Any such modification shall be in writing signed by all Parties.

V. MISCELLANEOUS PROVISIONS

A. Term of Agreement

The term of this Estuary MOA will extend from its effective date through midnight on September 30, 2018, unless amended by mutual agreement of the Parties.

B. Relationship Between This Agreement and Implementing Intergovernmental Agreements

The Parties will enter into separate and discrete intergovernmental agreements to implement this Estuary MOA. Once issued, those intergovernmental agreements will govern all activities addressed in those agreements. For example, the provisions of this MOA regarding changed circumstances, renegotiation and withdrawal (Section IV.C) would not govern disputes in a Corps partnering agreement or BPA contract. Similarly, if a Party were to withdraw from this MOA pursuant to Section IV.C, this would not automatically terminate any implementing intergovernmental agreements; any decision to terminate an implementing intergovernmental agreement would be pursuant to that agreement's termination provisions.

C. Applicable Law

All activities undertaken pursuant to this Agreement must be in compliance with all applicable laws and regulations. No provision of this Agreement will be interpreted or constitute a commitment or requirement that the Action Agencies or Washington take action in contravention of law, including the APA, ESA, CWA, NEPA, Federal Advisory Committee Act, Information Quality Act, or any other procedural or substantive law or

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regulation. Federal law shall govern the implementation of this Agreement and any action to enforce its terms.

D. Authority

Each Party to this Agreement represents and acknowledges that it has full legal authority to execute this Agreement.

E. Effective Date & Counterparts

The effective date of this Agreement shall be the date of execution by the last Party to provide an authorized signature to this Agreement. This Agreement may be executed in counterparts, each of which is deemed to be an executed original even if all signatures do not appear on the same counterpart. Facsimile and photo copies of this Agreement will have the same force and effect as an original.

F. Binding Effect

This Agreement shall be binding on the Parties and their assigns and successors. Each Party may seek dispute resolution in accordance with Section IV.D, or to withdraw in accordance with Section IV.C.3 if the dispute is not resolved.

G. No Third Party Beneficiaries

No third party beneficiaries are intended by this Agreement.

H. Entire Agreement

All previous communications between the Parties, either verbal or written, with reference to the subject matter of this Agreement are superseded, and this Agreement duly accepted and approved constitutes the entire Agreement between the Parties.

I. Waiver, *Force Majeure*, Availability of Funds

I.1. The failure of any Party to require strict performance of any provision of this Agreement or a Party's waiver of performance shall not be a waiver of any future performance of or a Party's right to require strict performance in the future.

I.2. No Party shall be required to perform due to any cause beyond its control. This may include, but is not limited to fire, flood, terrorism, strike or other labor disruption, act of God or riot. The Party whose performance is affected by a *force majeure* will notify the other Parties as soon as practicable of its inability to perform, and will make all reasonable efforts to promptly resume performance once the *force majeure* is eliminated.

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If the force majeure cannot be eliminated or addressed, the Party may consider withdrawal pursuant to Section IV.C.3.

I.3. The actions of the Corps and Reclamation set forth in this Agreement are subject to the availability of appropriated funds. Nothing in this Agreement shall be construed to require the obligation or disbursement of funds in violation of the Anti-Deficiency Act.

J. Notice

J.1. Any notice permitted or required by the Good Faith provisions of this Agreement, Section IV.B, may be transmitted by e-mail or telephone to a Party's initial contact points, as that person is defined pursuant to the Good Faith provisions.

J.2. All other notices permitted or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, addressed as follows, or at such other address as any Party may from time to time specify to the other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by mail. The addresses listed below can be modified at any time through written notification to the other Parties.

Notices to BPA should be sent to:

Vice President, Environment Fish & Wildlife
Mail Stop KE-4
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

Notices to the U.S. Army Corps of Engineers should be sent to:

U.S. Army Corps of Engineers, Northwestern Division
Chief, Planning, Environmental Resources and Fish Policy Support Division
1125 NW Couch Street
Suite 500
P.O. Box 2870
Portland, OR 97208-2870

Notices to the U.S. Bureau of Reclamation should be sent to:

Deputy Regional Director
Bureau of Reclamation
Pacific Northwest Region
1150 N. Curtis Rd., Suite 100
Boise, ID 83706

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Notices to the State of Washington should be sent to:

Southwest Regional Director
Washington Department of Fish and Wildlife
2108 Grand Boulevard
Vancouver, WA 98661

K. List of Attachments

Attachment 1—Excel spreadsheet showing projects and funding commitments

Attachment 2—Narrative description of projects, and benefits to ESUs

Attachment 3—LCREP ecosystem criteria

Attachment 4—Corps 536 Program Authority & Flow Chart

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SIGNATURES

/s/ Stephen J. Wright *[Sept. 16, 2009]*

Stephen J. Wright Date
Administrator and Chief Executive Officer
Bonneville Power Administration

/s/ William Rapp *16 Sept. 2009*

William E. Rapp, P.E. Date
Brigadier General, US Army
Division Commander

/s/ J. William McDonald *Sept. 16, 2009*

J. William McDonald Date
Regional Director
U.S. Bureau of Reclamation
Pacific Northwest Region

/s/ Christine Gregoire *9/16/09*

Christine O. Gregoire Date
Governor
State of Washington

/s/ Phil Anderson *9-16-09*

Phil Anderson Date
Director
Washington Department of Fish and Wildlife

#	PROJECT TITLE	Estimated Cost (2009 Dollars)	2010	2011	2012-2018	TOTAL
	Total BPA+Corps Budget Target (Not including 2.5% Inflation on BPA \$1.8M annual commitment)		\$ 4,500,000	\$ 4,500,000	\$ 31,500,000	\$ 40,500,000
	WDFW Umbrella project -- WDFW Component	\$160,000 / Year	\$ 160,000	\$ 160,000		\$ 320,000
	Lower Columbia Fish Recovery Board (LCFRB) Component	\$90,000 / Year	\$ 90,000	\$ 90,000		\$ 180,000
1	Abernathy Tidal Restoration	\$450,000	\$450,000			\$ 450,000
2	Hump-Fisher Island Restoration	\$800,000	\$800,000			\$ 800,000
3	Cottonwood/Howard Island Tidal Channel Connection	\$1,100,000	\$700,000	\$ 400,000		\$ 1,100,000
4	Lower Kalama Tidal Restoration	\$550,000	\$550,000			\$ 550,000
5	Acquisition of Chaney Parcel at Wood's Landing and Restoration of Chum Salmon Spawning Tributary	\$1,850,000	\$950,000	\$ 900,000		\$ 1,850,000
6	Post Office Lake Wetland Restoration	\$1,350,000	\$800,000	\$ 550,000		\$ 1,350,000
	Budget for other Projects, selected from menu, including but not limited to the following, which will be further scoped beginning in FY 10:			\$ 2,400,000	\$ 31,500,000	\$ 33,900,000
7	Germany Tidal Restoration	\$930,000				
8	Paradise Point Wetland Enhancement	\$700,000				
9	Austin Point LWD Complexing	\$350,000				
10	Elochoman Tidal Restoration	\$600,000				
11	Willow Grove Tidal Restoration	To Be Determined				
12	Shillapoo Wildlife Area - Feasibility of Setback Levees	To Be Determined				
13	Duncan Creek Fish Passage Restoration	To Be Determined				
14	Lower Washougal Delta Habitat Complexing	~\$200,000				
15	Lower Kalama Delta Habitat Complexing	~\$400,000				
16	Chinook River Estuary Restoration	To Be Determined				
17	Lower Cowlitz Tidal Restoration	~ \$6 million (rough)				
18	Coweeman River Tidal Restoration	To Be Determined				
19	Lewis River Acquisition	To Be Determined				
20	Port of Kalama Off-channel Wetland Enhancement	To Be Determined				
21	Barlowe Point Beach Nourishment	To Be Determined				
	Totals:		\$ 4,500,000	\$ 4,500,000	\$ 31,500,000	\$ 40,500,000

ATTACHMENT 2

WDFW Estuary MOA Preliminary Habitat Project List Notes:

Preliminary Project List: The projects identified in this list are derived from a variety of sources, including the Lower Columbia Fish Recovery Board (LCFRB), Lower Columbia River Estuary Partnership (LCREP), U.S. Army Corps of Engineers (USACE), Washington Department of Fish and Wildlife (WDFW), and other entities. This project list will be adjusted over time depending on feasibility, emerging priorities and opportunities, and landowner and community support.

Landowner Support and Coordination: Landowner and community support is recognized as critical to the long term success of Estuary Habitat MOA implementation. No project will be implemented without first securing necessary landowner and community support, and required agreements.

Estimated Project Benefits: Salmon and steelhead survival benefits are determined in accordance with the guidance and procedures outlined in “Estimated Benefits of Federal Agency Habitat Projects in the Lower Columbia River and Estuary” (FCRPS BA, Attachment B.2.2.). In summary, each project is first scored in terms of two criteria: certainty of success and potential benefits (0=low, 5=high). Then each project is linked to a related recovery action from the Estuary Recovery Plan Module, and evaluated for its contribution to implementation of that action, using survival improvement targets from the Module. This results in estimated survival units gained by the action, allocated to ocean- and stream-type juveniles. Project benefits identified in this table are considered preliminary, and will be refined by the expert technical group in accordance with Reasonable and Prudent Alternative (RPA) 37 (FCRPS Biological Opinion, 2008).

Project Coordination: As described in Section C.1 of the Estuary Habitat MOA, WDFW will sponsor or coordinate projects proposed under the agreement. WDFW will coordinate with the Lower Columbia Fish Recovery Board (LCFRB), Lower Columbia River Estuary Partnership (LCREP) and other action partners as needed to ensure efficient and effective implementation of the MOA.

Table 1 Preliminary WDFW Estuary MOA Project Benefits and Survival Unit Summary ¹

Washington MOA Project	Certainty of Success	Potential Benefit	Total	Estuary Module Sub-Action	Total Possible Survival Units by Sub-Action		Preliminary Estimated Survival Units By Project		Notes ⁵
					Ocean	Stream	Ocean	Stream	
1 Abernathy Tidal Restoration	4	3	12	CRE-1.4	2	2	0.06	0.06	Intensively Monitored Watershed (IMW) Treatment Plan identifies two projects in the tidal reaches of Abernathy Cr (1A and 2A). The projects would enhance a minimum of 500' of off-channel habitat and 2200' of mainstem through engineered log jam construction, large woody material placement, riparian enhancement, and floodplain reconnection. Conceptual designs have been completed for these projects. Explore opportunities for creation of chum spawning habitat. Project Site Acres = 22
2 Fisher - Hump Island Restoration	4	5	20	CRE-1.4	2	2	0.12	0.12	Modify dredged material to improve flushing flows within the Hump - Fisher Island embayment; plant additional riparian vegetation (Hump Island); revegetate meadow on Fish Island (5-10 acres); remove piling/add LWD. Project Site Acres = 337
				CRE-6	0.3	0.15	0.1	0.03	
3 Cottonwood/Howard Island Tidal Channel Connection	3	5	15	CRE-10.1	15	6	0.15	0.05	Reconnect and construct backwater channels. Project Site Acres = 400
4 Lower Kalama Tidal Restoration	5	4	20	CRE-1.4	2	2	0.1	0.1	Lower Columbia Fish Enhancement Group (LCFEG) recently completed a Lower Kalama Off-channel Habitat Assessment that identified five projects in the tidal reaches of the Kalama. Three of these scored in the fundable range when subjected to the LCFRB criteria (KRL 0.1, KRR 0.7, and KRL 1.4). These projects would create or enhance existing off-channel habitat. Conceptual designs and cost estimates have been completed for KRR 0.7. Explore opportunities for creation of chum spawning habitat. Project Site Acres = 32 + 34 + 2 + 12
				CRE-10.1	10	4	0.12	0.05	
5 Acquisition of Two Alternative Parcels at Wood's Landing/Columbia Springs and Restoration of Chum Salmon Spawning Tributary or Channel	4	3	12	CRE-9.1	1	0.5	0.2	0.05	Acquire one of two possible properties in the vicinity of the genetically distinct I-205 spawning population of chum salmon, and restore tributary spawning habitat either by: OPTION A - Acquire the 2.29 acre Chaney property located just downriver of the Wood's Landing Columbia River chum salmon spawning site -- that can be combined with existing conservation easements to result in a combined restoration area of 13.0 acres. This parcel contains the last unprotected habitat for "I-205 population" of chum salmon. Site also has Native American cultural and educational values and a functioning riverine wildlife community; or, OPTION B - Acquire the 5.5 acre Egan Property and construct a 1400' long by 6' wide engineered spawning channel using natural springs and the WDFW Vancouver Hatchery as a water source. A conceptual design and preliminary feasibility study have been completed on this alternative. This site has high educational potential since it is adjacent to the Columbia Springs educational facility. Project Site Acres = 13.0 (Chaney+Woods Landing) or 5.5 (Egan parcel).
				CRE-9.3	8	3	0.24	0.03	

Washington MOA Project	Certainty of Success	Potential Benefit	Total	Estuary Module Sub-Action	Total Possible Survival Units by Sub-Action		Preliminary Estimated Survival Units By Project		Notes ⁵
					Ocean	Stream	Ocean	Stream	
6 Post Office Lake	4	4	16	CRE-1.4	2	2	0.18	0.18	This project will restore hydrologic connection from the Post Office Lake floodplain wetland with the estuary while protecting privately owned farmland. The objective is to re-establish access and improve wetland function to approximately 80 acres of shallow water habitat for juvenile salmonids. Project Site Acres = 80
				CRE-10.1	10	4	0.15	0.05	
7 Germany Tidal Restoration	4	3	12	CRE-1.4	2	2	0.06	0.06	IMW Treatment Plan identifies two projects in the tidal reaches of Germany Creek (2A, 2B, 2C). The projects would enhance a minimum of 600' of mainstem habitat, stabilize 350' of eroding bank, and enhance a minimum of 7 acres of riparian area. Conceptual designs have been completed for these projects. Explore opportunities for creation of chum spawning habitat. Project Site Acres = 75
8 Paradise Point Wetland Enhancement	5	4	20	CRE-1.4	2	2	0.08	0.08	Restore and enhance approximately 1000 lineal feet of side channel habitats within a tidally influenced forested/emergent/scrub-shrub wetland complex; construct mainstem LWD structures to increase juvenile rearing and adult holding habitat during low tributary flows, low Columbia River flows, and periods of low tide; and investigate opportunities for creation of chum spawning habitat. Restoration would compliment conservation banking efforts on Morgan Property, at the North Fork Lewis River mouth. Project Site Acres = 60
				CRE-10.1	10	4	0.15	0.07	
				CRE-15.3	1.5	0.7	0.05	0.02	
9 Austin Point LWD Complexing	4	4	16	CRE 1.4	2	2	0.07	0.07	Restore riparian habitat and construct ELJs on the right bank of the North Fork Lewis River at the confluence with the Columbia River, to provide instream cover and complexity, and cold-water refuge for outmigrating salmonids. Restoration would compliment conservation banking efforts on Morgan Property, at the North Fork Lewis River mouth, across from project site; investigate options for off-channel habitat creation other WDFW lands in project vicinity. Project Site Acres = 71
10 Elochoman Tidal Restoration	3	5	15	CRE-1.4	2	2	0.06	0.06	CLT was funded to purchase 200 acres of high quality intertidal forested riparian and wetland habitat along the Elochoman River and Elochoman Slough. The property is adjacent to the JBH Refuge and 210 acres already owned by CLT on Nelson Creek. The property includes over 7000' of off channel habitat. Potential restoration activities on the property include culvert removal, tidegate removal, road abandonment, invasive treatment, and riparian enhancement. Project Site Acres = 200
				CRE-10.1	10	4	0.15	0.05	
				CRE-10.2	3	1.2	0.05	0.01	
				CRE-15.3	1.5	0.7	0.05	0.02	
11 Willow Grove Tidal Restoration	3	5	15	CRE-1.4	2	2	0.06	0.06	CLT has recently purchased over 200 acres of intertidal wetland and off-channel habitat along the Columbia River and Coal Creek. Potential restoration activities include restoration of native wetland communities, invasive control, and enhancing the hydrologic connection of the site to the mainstem, possibly via Fisher slough. Project Site Acres = 312
				CRE-10.1	10	4	0.15	0.05	
				CRE-15.3	1.5	0.7	0.05	0.01	

Washington MOA Project	Certainty of Success	Potential Benefit	Total	Estuary Module Sub-Action	Total Possible Survival Units by Sub-Action		Preliminary Estimated Survival Units By Project		Notes ⁵
					Ocean	Stream	Ocean	Stream	
12 Shillapoo Wildlife Area Floodplain Reconnection	NA	NA	NA	NA	0.0	0.0	0.0	0.0	Investigate the potential for providing fish passage to re-connect historical floodplain wetland habitats at Shillapoo Wildlife Area. Restoration actions will focus on restoring hydrology to existing water bodies, providing physical access for juvenile salmonids, reducing elevated temperatures, and managing piscivorous fish species. Project requires further scoping prior to assessing survival units. Project Site Acres = ~900
13 Duncan Creek Fish Passage Restoration	3	3	9	CRE-10.2	3	1.2	0.03	0.1	Modify existing dam and outlet structure and construct a backwater elevation control berm/roughened channel to improve steelhead, coho and chum passage during Columbia River low flow periods. Project Site Acres = 2
14 Lower Washougal Delta Habitat Complexing	4	4	16	CRE-1.4	2	2	0.06	0.06	Construct ELJs on the Lower Washougal river delta at the Columbia River confluence to provide instream cover and complexity, and cold-water refuge for outmigrating juvenile salmonids and migrating adults. Project Site Acres = 10
15 Lower Kalama Delta Habitat Complexing	3	4	12	CRE-1.4	2	2	0.06	0.06	Construct ELJs on the Lower Kalama river delta at the Columbia River confluence to provide instream cover, complexity and holding; cold-water refuge for outmigrating juvenile salmonids and migrating adults; and to reduce predation by pinnepedes during low flow conditions. Investigate options for channel realignment. Project Site Acres = 5
16 Chinook River Estuary Feasibility/Restoration ⁴	2	5	10	CRE-10.1	10	4	0.15	0.05	Enhance tidal inundation of the historic Chinook River estuary through creation of a community adaptive management strategy. WDFW along with several partners have replaced the failing tide-gates with two new gates that have the ability to be mechanically opened and closed. The new gates provide increased flood protection to Chinook Valley landowners and provide an important management tool in improving the health and productivity of the Chinook River estuary. Through modeling and monitoring efforts WDFW will work with several adaptive management strategies to increase the tidal fluctuation to approximately 500 acres in the Chinook River estuary. Project Site Acres = 500
				CRE-10.2	3	1.2	0.03	0.01	
				CRE-10.3	2	0.8	0.03	0.01	
17 Lower Cowlitz River Tidal Restoration	3	3	9	CRE-1.4	2	2	0.05	0.05	The Lower Cowlitz River and Floodplain Habitat Restoration Project Siting and Design report identifies 6 potential projects in the tidal reaches of the Lower Cowlitz and Coweeman Rivers (1.0L, 0.5R, C3.5R, C4.0B, 3.0L, 4.5R). These projects include removal of dredge material, riparian enhancement, side channel creation and/or enhancement, riprap removal, and LWD placement. (Note: when scored by LCFRB, these projects did not all fall within the fundable range, but out-of-basin/estuary benefits were not included at that time). Opportunities exist for beneficial use of dredged materials. Project Site Acres = 226
				CRE-6.2	0.3	0.15	0.08	0.01	

Washington MOA Project	Certainty of Success	Potential Benefit	Total	Estuary Module Sub-Action	Total Possible Survival Units by Sub-Action		Preliminary Estimated Survival Units By Project		Notes ⁵
					Ocean	Stream	Ocean	Stream	
18 Coweeman River Tidal Restoration	4	3	12	CRE-1.4	2	2	0.06	0.06	The Lower Cowlitz River and Floodplain Habitat Restoration Project Siting and Design report identifies 6 potential projects in the tidal reaches of the Lower Cowlitz and Coweeman Rivers (1.0L, 0.5R, C3.5R, C4.0B, 3.0L, 4.5R). These projects include removal of dredge material, riparian enhancement, side channel creation and/or enhancement, riprap removal, and LWD placement. (Note: when scored by LCFRB, these projects did not all fall within the fundable range, but out-of-basin/estuary benefits were not included at that time). Opportunities for beneficial use of dredged materials. Project Site Acres = 71
				CRE-6.2	0.3	0.15	0.08	0.01	
19 Lewis River Acquisition and Restoration	4	4	16	CRE-1.3	2	2	0.1	0.1	Clark Co. is proposing to acquire a large parcel of floodplain forest along the left bank of the mainstem Lewis near Mud Lake. This property also has potential for future side channel and floodplain reconnection, as well as lacustrine habitat restoration. Acquisition and restoration would compliment conservation banking efforts on Morgan Property, at the North Fork Lewis River mouth. Project Site Acres = 154
				CRE-1.4	2	2	0.08	0.08	
				CRE-9.3	8	3	0.15	0.03	
				CRE-10.3	2	0.8	0.06	0.01	
				CRE-15.3	1.5	0.7	0.05	0.01	
20 Port of Kalama Off-channel Wetland Enhancement	5	5	25	CRE-1.4	2	2	0.06	0.06	Restore and enhance tidal slough and channel habitats at the Port of Kalama's Northport mitigation site and WDFW ownership; remove or modify pile structures. Project Site Acres = 157
				CRE-8.2	6	6	0.03	0.03	
				CRE-10.1	10	4	0.12	0.05	
				CRE-15.3	1.5	7	0.05	0.01	
21 Barlowe Point Beach Nourishment	4 if public ownership, 2 if private	2	4 to 8	12.1	0.2	0.1	0.02	0.01	Contour beach profile through beach nourishment to reduce fish stranding (Note: should be associated with subsequent effectiveness monitoring). Project Site Acres = 21
Total:							3.75	2.09	

Washington MOA Project	Certainty of Success	Potential Benefit	Total	Estuary Module Sub-Action	Total Possible Survival Units by Sub-Action		Preliminary Estimated Survival Units By Project		Notes ⁵
					Ocean	Stream	Ocean	Stream	

ESU Type	Project Contribution Totals	Estuary Survival Benefit (.2)	(x
Ocean	3.75	0.75	
Stream	2.09	0.418	

¹Salmon and steelhead survival benefits are determined in accordance with the guidance and procedures outlined in “Estimated Benefits of Federal Agency Habitat Projects in the Lower Columbia River and Estuary” (FCRPS BA, Attachment B.2.2). Project benefits identified in this table are considered preliminary, and will be refined by the expert regional technical group in accordance with Reasonable and Prudent Alternative (RPA) 37 (FCRPS Biological Opinion, 2008).

²This project received survival benefits as a construction project in the 2008 baseline portfolio (2000 - 2006).

³This project is a feasibility study therefore no survival benefits were assigned.

⁴This project received acquisition survival benefits and restoration survival benefits in the 2008 BiOp (CRE-10.3).

⁵Project acreage refers to total project site. Actual acreage of restored habitat will be determined during final project development.

ATTACHMENT 3



Criteria for Identifying and Prioritizing Habitat Protection and Restoration Projects on the Lower Columbia River and Estuary*

Modified by NOAA to be more ESA specific

Ecosystem Criteria

1) Habitat Connectivity

This criterion recognizes that habitat connectivity is a landscape level concept. It emphasizes linkages between habitat areas that provide a variety of functions **ESA-listed salmonids** at various stages of their life cycle (**juvenile, yearling, and adult**) and that gradual alteration of landscapes through natural succession and retrogression allow species that require a variety of habitat components to disperse and survive. In the Lower Columbia, historic changes have limited or cut off **listed salmonids'** access to resources needed for their development **and migration**. Specific emphasis on species with narrow ecological requirements **such as salmonids will be prioritized**. Upland habitat areas adjacent to drainage ways, existing protected/restored sites, and areas offering diverse habitat types, function, and successional stages should also be considered.

2) Areas of Historic Habitat Type Loss

Land use activities such as diking, filling, **pile dike field development**, and shoreline hardening have removed many of the shallow, peripheral wetlands along the Lower Columbia, isolating the river from its floodplain. This criterion recognizes that historic wetland types such as emergent and forested wetlands that are particularly important for salmonids, have been greatly diminished. These habitats promote networks of physical complexity such as shallow, dendritic channels and backwater sloughs. **NMFS' Northwest Fisheries Science Center has emphasized the need to connect historic habitats that have been disconnected from the mainstem system that are important to ESA-listed salmonids.**

3) Improvement in Ecosystem Function

This criterion acknowledges that some restoration actions can result in greater enhancement of ecosystem functions than others. This criterion emphasizes that location of a project may in some cases be more important than size of the project. **This is especially the case for dike removal projects that can open backwater habitat back up for salmonid access. This criterion also emphasizes the need to closely evaluate the quality and long-term sustainability of the project.**

4) Adequate Size and Shape

Size refers to reach length and the size of the potential habitat within a reach. In general, larger size enhances habitat stability, increases the number of salmonid species that can potentially use the site, makes it easier to find by migratory species such as salmonids, and increases within-habitat complexity.

5) Level of Complexity

This criterion refers to the number and interspersed of different types of habitats within a given restoration reach or area. As the number of habitats increase, so do the number of salmonid species that can occupy an area, and the number of functions supported by an area. Higher complexity potentially results in higher biodiversity. It is recognized that some restoration efforts, such as a chum channel, may not strive for habitat complexity.

6) Accessibility For Target Species

Accessibility refers to unencumbered access by Columbia River for ESA-listed salmonid species that utilize estuary habitat. Projects that allow or enhance access of these species to important habitats would potentially enhance the feeding, rearing, and refuge functions of the site are preferred. This criterion acknowledges the need to restore habitat for those threatened and endangered species, whose populations are at precariously low numbers and who might benefit from improved near-shore habitat conditions.

ATTACHMENT 4

-=

SEC. 536. LOWER COLUMBIA RIVER AND TILLAMOOK BAY ECOSYSTEM RESTORATION, OREGON AND WASHINGTON.

(a) IN GENERAL- The Secretary shall conduct studies and ecosystem restoration projects for the lower Columbia River and Tillamook Bay estuaries, Oregon and Washington.

(b) USE OF MANAGEMENT PLANS-

(1) LOWER COLUMBIA RIVER ESTUARY-

(A) IN GENERAL- In carrying out ecosystem restoration projects under this section, the Secretary shall use as a guide the Lower Columbia River estuary program's comprehensive conservation and management plan developed under section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330).

(B) CONSULTATION- The Secretary shall carry out ecosystem restoration projects under this section for the lower Columbia River estuary in consultation with the Governors of the States of Oregon and Washington and the heads of appropriate Indian tribes, the Environmental Protection Agency, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the Forest Service.

(2) TILLAMOOK BAY ESTUARY-

(A) IN GENERAL- In carrying out ecosystem restoration projects under this section, the Secretary shall use as a guide the Tillamook Bay national estuary project's comprehensive conservation and management plan developed under section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330).

(B) CONSULTATION- The Secretary shall carry out ecosystem restoration projects under this section for the Tillamook Bay estuary in consultation with the Governor of the State of Oregon and the heads of appropriate Indian tribes, the Environmental Protection Agency, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the Forest Service.

(c) AUTHORIZED ACTIVITIES-

(1) IN GENERAL- In carrying out ecosystem restoration projects under this section, the Secretary shall undertake activities necessary to protect, monitor, and restore fish and wildlife habitat.

(2) LIMITATIONS- The Secretary may not carry out any activity under this section that adversely affects--

(A) the water-related needs of the lower Columbia River estuary or the Tillamook Bay estuary, including navigation, recreation, and water supply needs; or

(B) private property rights.

(d) PRIORITY- In determining the priority of projects to be carried out under this section, the Secretary shall consult with the Implementation Committee of the Lower Columbia River Estuary

Program and the Performance Partnership Council of the Tillamook Bay National Estuary Project, and shall consider the recommendations of such entities.

(e) COST-SHARING REQUIREMENTS-

(1) STUDIES- Studies conducted under this section shall be subject to cost sharing in accordance with section 105 of the Water Resources Development Act of 1986 (33 U.S.C. 2215).

(2) ECOSYSTEM RESTORATION PROJECTS-

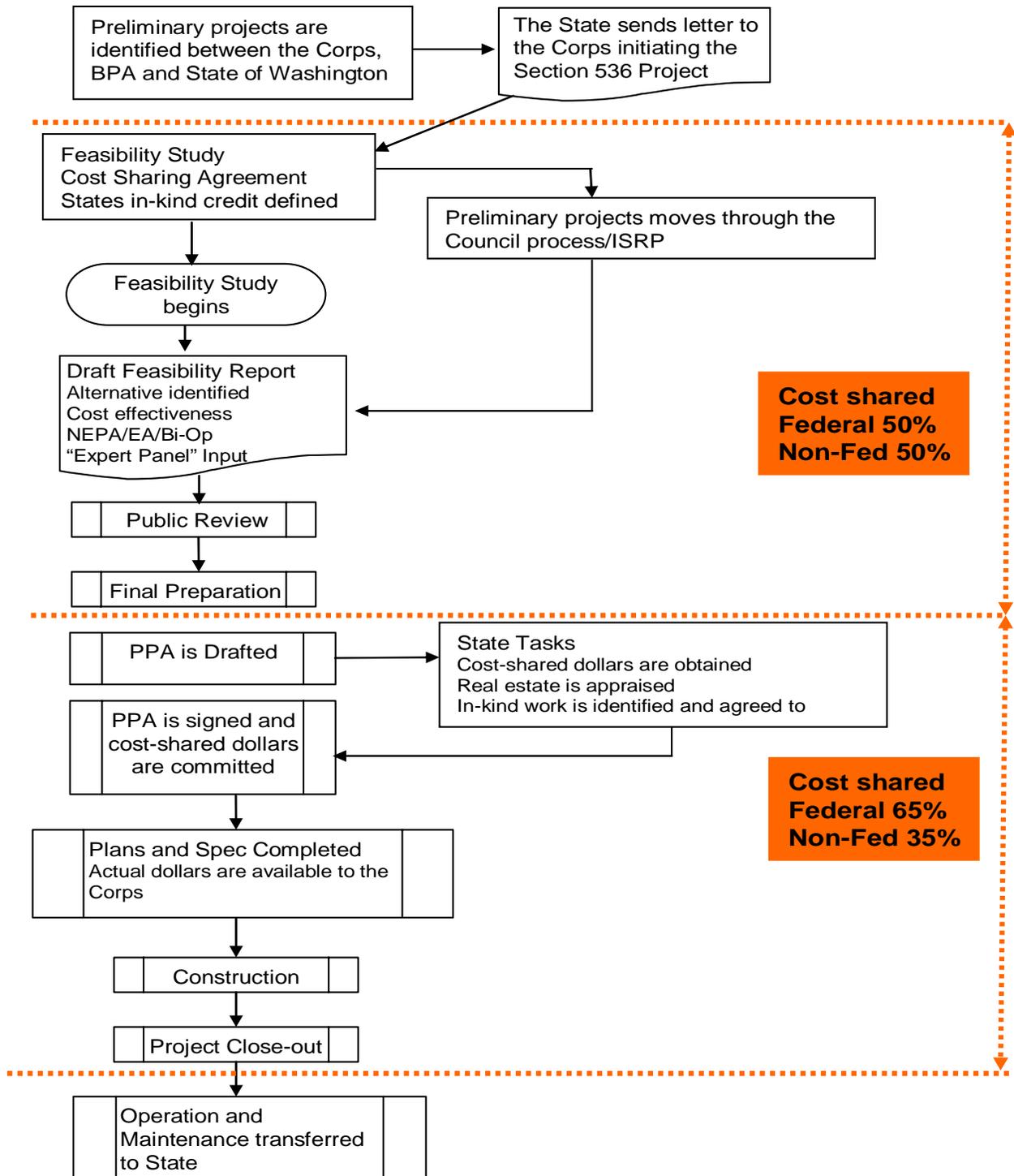
(A) IN GENERAL- Non-Federal interests shall pay 35 percent of the cost of any ecosystem restoration project carried out under this section.

(B) ITEMS PROVIDED BY NON-FEDERAL INTERESTS- Non-Federal interests shall provide all land, easements, rights-of-way, dredged material disposal areas, and relocations necessary for ecosystem restoration projects to be carried out under this section. The value of such land, easements, rights-of-way, dredged material disposal areas, and relocations shall be credited toward the payment required under this paragraph.

(C) IN-KIND CONTRIBUTIONS- Not more than 50 percent of the non-Federal share required under this subsection may be satisfied by the provision of in-kind services.

(3) OPERATION AND MAINTENANCE- Non-Federal interests shall be responsible for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating all projects carried out under this section.

(4) FEDERAL LANDS- Notwithstanding any other provision of this subsection, the Federal share of the cost of a project carried out under this section on Federal lands shall be 100 percent, including costs of operation and maintenance.





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

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

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

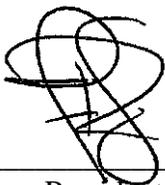
BE IT FURTHER RESOLVED, that ATNI hereby calls upon the White House Council on Environmental Quality to direct the U.S. Army Corps of Engineers (USACE) to develop a comprehensive EIS at the USACE Northwestern Division level, on the cumulative effects of all six currently proposed coal export proposals, 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

For Immediate Release: September 27, 2012

Distributed in conjunction with the Coast Salish Gathering and Association of Washington Tribes

Northwest Tribes say no short-cuts for coal export proposals

For more information contact:

Debra Lekanof, Swinomish Indian Tribal Community (360) 391-5296

Julie Carter, Columbia River Inter-Tribal Fish Commission (503) 238-0667

Mission, Oregon: Faced with the possibility of impacts to human health, natural resources and economies, leadership of Northwest tribes today called on the U.S. Army Corp of Engineers to conduct a full environmental analysis for all six proposals to transport and export coal through their shared lands and waters.

Today's action arose from the Northwest Tribal Coal Summit organized by the Association of Washington Tribes and the Coast Salish Gathering in conjunction with the Affiliated Tribes of Northwest Indians' fall convention hosted by the Confederated Tribes of the Umatilla Indian Reservation.

Driven by exploding Asian demand and declining domestic consumption of coal, export proposals have sprung up at Oregon and Washington ports. Six proposals call for transporting Powder River Basin coal from Montana through Indian and non-Indian lands in the Northwest via rail and barge.

Tribal communities are expressing grave concern about the health and safety impacts from environmental dangers of coal dust.

"Along the Columbia River it's cliff, highway, railroad, then river. Our communities are wedged between the railroad and the river. We've got nowhere to escape," said Paul Lumley, Executive Director of the Portland-based Columbia River Inter-Tribal Fish Commission. "If we cannot escape, neither will the coal."

The Tulalip Tribes expressed their concern both environmentally and economically. Tulalip is one of the largest economic engines in the region, along with Boeing. The Tulalips say that an increase in rail traffic along the I-5 corridor to as many as 18 trains a day will bring traffic in the area to a halt, blocking access to businesses, hospitals and fire stations.

"The risks not only to our tribe can be devastating, but also to the entire county," said Mel Sheldon, Chairman. "We've made substantial retail investments that depend heavily on quality of life, and we have collaborated with local citizens to restore and protect our watersheds. We are tracking this carefully, and plan to express our decision on this new threat in the near future."

Tribal leaders were addressed by Colonel Anthony Funkhouser, Commander of the Northwest Division of the U.S. Army Corps of Engineers, whose agency has federal permitting authority over coal export terminals through the Clean Water Act and Rivers and Harbors Act. The Corps of Engineers announced last week they would conduct an Environmental Assessment rather than a more rigorous Environmental Impact Statement on the Port of Morrow proposal for a new export coal terminal.

"We don't want the minimum protection any longer, we're used to getting the minimum", said Brooklyn Baptiste, Vice-Chairman of the Nez Perce Tribe. "We deserve the maximum attention and expect the lead and coordinating agencies to provide the full environmental studies on all ports, as they will be

making one of the largest decisions impacting human health, the environment and economies of not only our tribal communities, but of our neighboring citizens of the Northwest.”

Kathryn “Kat” Brigham, member of the Confederated Tribes of Umatilla Board of Trustees, urged tribal leaders to reach out to neighboring communities, “they have something at risk too.”

In addition to full environmental assessment the today’s resolution passed by the fifty-seven member tribes of ATNI called for full transparency and government to government consultation throughout the entire decision making process the local, state, and federal levels.

“We believe the Northwest is interconnected through the families, resources and waterways, that these coal terminals and railway routes should be addressed in a holistic manner,” expressed by Chairman Brian Cladoosby, Swinomish Tribe. “If a coal train or tanker were to spill on the route or in the river at Port Morrow in Oregon, the water ways will carry the pollution throughout the Northwest, and coal dust will be carried through the mountains in the air we all breath. “

Billy Frank Jr., Chairman of the Northwest Indian Fish Commission added, “The idea of a half-dozen new coal export terminals in western Washington and Oregon -- and the hundreds of trains and barges running from Montana and Wyoming every day to deliver that coal -- would threaten our environment and quality of life like nothing we have seen before. Coal may be a cheap source of energy for other countries, but these export facilities and increased train traffic would come at a great cost to our health, natural resources and communities.”

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May 3, 2012

Major General Merdith W.B. (Bo) Temple
Commanding General and Chief of Engineers, Acting
Headquarters
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Brigadier General John McMahon
Commander and Division Engineer
Northwestern Division
U.S. Army Corps of Engineers
P.O. Box 2870
Portland, OR 97208-2870

Colonel John Eisenhauer
Commander, Portland District
U.S. Army Corps of Engineers
P.O. Box 2946
Portland, OR 97208-2946

Colonel Bruce Estok
Commander, Seattle District
U.S. Army Corps of Engineers
P.O. Box 3755
Seattle, WA 98124-3755

Re: Yakama Nation Comments NWP-2012-56 Coyote Island Terminal Coal Facility

Dear Sirs:

I am the Chairman of the Tribal Council for the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation" or "Nation"). The Nation is a federally recognized sovereign Indian tribe. The Yakama Nation reserved several rights under a treaty it signed with the Federal Government of the United States of America ("Treaty of 1855"), ratified by the United States Congress in 1859 (12 Stat. 951). Among various rights the Yakamas reserved to themselves and their progeny is the right to take fish in all usual and accustomed places, including the Columbia River. The Yakamas also secured the right to exclusive use and enjoyment of their Reservation. Implied within this right is the right to live free from environmental damages caused by nuisances, even those nuisances originating or transpiring outside the boundaries of the Yakamas' Reservation, such as the transportation of coal through the Nation's ancestral lands. The Coyote Island Terminal, and the regional plan of which it is unquestionably a part, implicates these rights and compels our Nation to submit this letter on behalf of our people, our ancestors who came before us, and those who've yet to come and have no voice to advocate for their rights.

This letter serves two purposes. First it is Yakama Nation's initial comments regarding the proposal for the Coyote Island Terminal, which is the first swell in the proposed regional tidal wave of coal transportation and exportation. Beyond the Coyote Island Terminal proposal we note that there are at least four additional coal export facilities planned for construction in Washington and Oregon. Therefore, through these comments we establish the basis for your agency to require a regional Programmatic Environmental Impact Statement ("PEIS") pursuant to the National Environmental Policy Act ("NEPA"). And we formally request a PEIS in this instance. A process to develop a PEIS would dispense with a piecemeal approach to review of



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the regional plan the Coyote Island Terminal represents in favor of comprehensive and honest analyses. We find that a PEIS in this instance is a baseline for any valid analysis of the environmental and cultural impacts the proposed regional inundation of coal will have on the Yakama People, on all the residents of the northwestern states of our country, and the environment we all hold in trust for the benefit of generations to come.

With this prologue in mind, you'll find some of the apparent negative impacts associated with the Coyote Island Terminal application and the five other proposed coal export facilities in Washington and Oregon detailed in these comments. As we set forth below, the Coyote Island Terminal and its inextricable role in the regional plan to fashion the northwest into a coal transport and export hub will have lasting, detrimental impacts on the region's fisheries, its air quality, global climate change, and the Yakama Nation's cultural resources. And finally, both the letter and the spirit of the law require a PEIS to analyze these serious regional impacts, and mitigate those impacts.¹

INTRODUCTION

Since we saw the first waves of outsiders settling here more than 150 years ago, their corporate enterprises and governments, their governmental policies, and the people that execute those policies have systematically ravaged the Yakama People's ancestral lands, waters, and air. They tell us these destructive plans are part of the march of progress. But their plans for progress have left a wake of destruction that has nearly eradicated our indigenous culture — a culture that teaches reverence for the environment and seeks to live in harmony with the world around it rather than exploit our resources as a parasite would see its host. These devastating waves have not only laid waste to our environment, they've swept away the resources upon which the Yakama People have relied for millennia. The next wave of so-called progress threatening my people is the coordinated plan to incrementally but totally transform our ancestral lands and the entire northwestern U.S. into a hub for the global exportation of coal.

As a specific historic example, we note the silence of Celilo Falls. This silence is a constant reminder of the destructive pattern the waves of progress sweeping through this region inflicted on the Columbia River Gorge ("CRG") and its native people. Fifty-five years ago, we watched as the closing of the floodgates at The Dalles Dam not only silenced Celilo Falls indefinitely, but also destroyed an area sacred to the Yakama People. Put simply, the eradication of Celilo Falls destroyed our Tribes' heartland. While the deliberate destruction of Celilo Falls and its surrounding villages provides an enduring symbol of the onslaught my people have suffered in the name of progress, Columbia River dams, like the Dalles Dam, had the immediate and

¹ By requesting a PEIS, the Yakama Nation in no way waives its right to oppose the Coyote Island Terminal and any of the other plans to increase coal through the Yakama Nation's ancestral lands. In fact, the Yakama Nation categorically opposes the Coyote Island Terminal and would prefer the government prevent further degradation of the Columbia River and the Gorge region through which it runs.



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ongoing real-world effect of significantly eroding the Yakamas' right to take fish from the Columbia River and its tributaries. These consequences have rippled beyond the Columbia River, leaving the Nation deprived of its lifeblood; it's been forced to watch its culture slowly pass from existence as our youth now lack the opportunities to carry our customs and traditions forward. In sum, the Nation has been devastated by the waves of progress outsiders told us we must embrace.

Now we're told that what's best for us and our way of life is to embrace a staggering increase of coal transportation through the Yakamas' ancestral lands along the Columbia River. Like the dams of yesterday, the present plans to transform our region into a coal hub are championed as an essential element for progress. But the definition of "progress" cannot be limited to pecuniary progress without regard for the long-term damages those financial pursuits will cause. We must all do our part to ensure that real progress is made during our limited time on this earth, both economic and in many other more meaningful regards. For example, we have a duty to protect the environment not only because the law compels us to; we must protect our lands, our waters, and our air because our children and generations to follow will rely on them for sustenance, health, and security. We ask only that you do your duty and work with us to ensure that the waves we see on the horizon do not catch us unprepared and do not perpetuate the pattern of destruction the indigenous stewards of this region have endured for more than a century.

A. The Scope And Bases For The Yakama Nation's PEIS Request

A PEIS is a comprehensive review of a series of projects with impacts that are significantly interrelated; either programmatically, geographically, or environmentally. NEPA requires agencies to use this comprehensive method to review independent actions that have "cumulative" or "similar" impacts on an interrelated environment.² We urge your agency to carefully review federal environmental laws and what they have to say; not only regarding cumulative impacts, but also what the law mandates regarding the comprehensive analyses required for regional, multifaceted plans of development involving several projects — projects proponents may seek to have reviewed piecemeal for obvious, and I would argue short-sighted reasons. Particularly instructive is the language our nation's Supreme Court handed down three and a half decades ago in *Kleppe v. Sierra Club*.³ While the Supreme Court ultimately decided in that case that the record before it at that point did not warrant a PEIS, it did agree that a PEIS would be necessary when several coal-related proposals will have significant impacts on a given region:

“ . . . when several proposals for coal-related actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together.”⁴

² See 40 C.F.R. § 1508.25.

³ 427 U.S. 390 (1976)(internal citations and quotations omitted).

⁴ *Id.* at 410.



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The Supreme Court relied on two basic conclusions to find that no PEIS was required in the *Kleppe* case, neither of which are applicable here. First, the Supreme Court concluded that the various projects at issue in *Kleppe* were not part of a “proposal for regionwide action.”⁵ But here, the Port of Morrow Application (“Application”) is part of a larger “regionwide” plan for to transport coal through, and export coal from Oregon and Washington’s lands and waterways. Second, the Supreme Court upheld the agency’s determination in *Kleppe* that the coal plans for the region at issue there were not sufficiently “programmatically, geographically, and environmentally related” to require a PEIS because it found the agency’s determination was not arbitrary. In other words, the Supreme Court decided that the analysis of programmatic, geographic, and environmental interrelation “is a task assigned to the special competency of the appropriate agencies.” And when the record in that case reflected a reasoned and competent approach by the agency, the Supreme Court would not to disturb the agency’s expertly guided decision because that decision was not based on random or unreasoned whim. This second basis for the Supreme Court’s decision in the *Kleppe* case — the deference the courts give to an agency’s expertly guided and reasoned analysis — is especially critical here as your agency reviews this specific application and contemplates our request for a PEIS. As the *Kleppe* decision makes clear, your agency’s judgment is given deference. But with that deference comes grave responsibility. As a lead federal agency, the U.S. Army Corps of Engineers (“Corps”) is charged with utilizing its “special competency” to make an informed determination on whether the Application here is part of a regional plan that is sufficiently programmatically, geographically, and environmentally interrelated to warrant a PEIS. Even on the limited facts available to our staff, which have the various special competencies necessary for a complete environmental review, we find that there really is no reasonable debate on the matter of interrelatedness and the absolute necessity for a PEIS. The Port of Morrow is but the first of many planned coal-related projects that form a regional plan regarding coal transportation and exportation.

Presently, your agency is reviewing permits for several coal processing terminals in both Washington and Oregon. These multiple proposals represent an undeniably interrelated plan to turn our region into a hub for coal export. Permitting these proposals to move forward without a comprehensive environmental review through the completion of a PEIS may lead to the foundation of a global coal hub’s infrastructure in our region; this could be a crack in the proverbial dam that will spread and cause a catastrophic flood of additional coal-related development projects, forever transforming this region for the worse. Each current project raises the specter of unique and seriously damaging environmental impacts in and around the areas proposed for development of coal terminals. But when you consider the various projects as a regional plan, the collective adverse environmental impacts come into focus, as explained in detail below. As an illustrative example, the completion of all proposals is estimated to add rail traffic through our region necessary to carry roughly 150 million tons of coal. The PEIS must consider the collective impacts of such a breathtaking increase in train traffic through our lands,

⁵ *Id.* at 414-15.



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among the myriad other significant impacts that will result from the interrelated plans for coal in our region.

The specific scope and prescribed contents of a PEIS should be determined through a full scoping process that includes public hearings around the region, in addition to government-to-government consultation between your agency and the elected officials of the Yakama Nation among other interested and affected indigenous peoples in and around the region. But as a baseline, the PEIS requested should analyze and mitigate impacts our region will sustain from the various projects' proposals to transport coal from the mountainous regions east of us, through Oregon, Washington, and on to Asia. The PEIS should also analyze and mitigate impacts resulting from the construction and operation of the export facilities within this region. And, beyond the region, the PEIS should consider the impacts that we all will suffer from burning the exported coal in Asia. It is critical that this PEIS is completed prior to any individual permit being issued at the local, state, or federal level.

Further, the Yakama Nation expects this PEIS will not be a substitute for project-specific EIS's that should follow the completion of a PEIS analyzing the regional plan's cumulative effects. In other words, the PEIS should supplement future EIS's if the regional plans move forward, and the PEIS should not serve as an excuse to forego future environmental analysis specific to one project or another. Moreover, until the cumulative impacts of all planned coal-related projects in the region have been identified and analyzed, and until the Federal Government consults with the Yakama Nation on a government-to-government level, no agency should make any decisions that would allow the commencement of any coal-related project. In other words, no agency should permit any application to advance this regional coal plan until the PEIS is complete, the specific EIS's are complete, and all interested parties have an opportunity to examine the regional coal plan holistically.

B. Fisheries

As indicated, the Treaty of 1855 reserved to the Nation the right to fish in perpetuity at all usual and accustomed places as they were known at the time of the Treaty signing. Though this right has been significantly diminished through the destruction of Celilo Falls and other "development" in the area, in the legal arena, this powerful right has been affirmed and re-invigorated through extensive litigation beginning with the *U.S. v. Winans* case in 1911 and culminating with *United States v. Oregon*, which is still active. Today, the Yakama People continue to exercise their Treaty-reserved fishing rights on the Columbia River and its tributaries within the Nation's Ceded Lands and its usual and accustomed use areas. The site of the proposed action described in the Application is located completely within an area of active commercial gillnet fishing by members of the Yakama Nation.

Members of the Yakama Nation fish for subsistence and their livelihoods on the Columbia River using set gillnets that typically are anchored at one end to the river bank and to an anchored buoy up to 400 feet offshore in an orientation perpendicular to the flow of the river. Adult salmon and steelhead migrating upriver encounter the nets and become entangled in the gillnet webbing.



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Fishers lift the nets 2-3 times per day from small, outboard-powered boats to harvest the fish from the webbing. Because the nets generally are most effective during hours of darkness, fishers typically visit the nets at least once — and often more frequently — during the night when fish are abundant. Several hundred tribal members utilize this method of fishing constantly during the fishing season. In aggregate, they may deploy over 1,000 such nets on the Columbia between Bonneville and McNary dams in the fishery administrative area known as Zone 6. Weekly fishing periods are established by tribal regulation depending on the availability of harvestable fish from mid-May to early October and February 1 to late March.

1. Impacts to Tribal Fishing Sites

The proposed coal export facilities throughout the CRG, including the coal loading dock identified as the Coyote Island Terminal, would have significant direct and indirect detrimental impacts to tribal fisheries in the project area. The construction and operation of the proposed terminal at the Port of Morrow will very likely destroy four tribal gillnet sites that Yakama members currently use to exercise their tribal fishing rights.⁶ These particular threatened fishing sites are high quality and critically important to the tribal members who fish there. Construction of the proposed dock will at least interfere with — and very likely preclude — gillnet fishing at this location. From the Nation's experience with other docks and mooring dolphins, maneuvering barges into and out of the proposed dock will, again, at least interfere with, and perhaps preclude, fishing at sites adjacent to the proposed dock itself. It is important to note that these sites are not held or owned by individual tribal fishermen in the sense of title ownership. Rather, the Treaty-protected sites are held in trust by the Yakama Nation government for use by its enrolled members. The Nation authorizes tribal members to fish at certain sites on the Columbia through a site registration process administered by the Nation's Fisheries Program. Because the fishery is regulated in a site-oriented fashion, fishers authorized to fish at certain locations are not at liberty to simply move their fishing operation to another location on the river. The loss of fishing sites resulting from construction of the proposed dock would have the effect of disenfranchising the fishers authorized to fish at this location and would measurably diminish the number of fishing sites available to members of the Yakama Nation to exercise their Treaty-reserved right to fish at this usual and accustomed place. Put another way, construction of this project may directly violate the Treaty of 1855. Your agency must consider the potential treaty-violating effects of the Application.

2. Safety of Tribal Fisherman

Similarly, increased barge traffic through Zone 6 resulting from this project will impact the safety of tribal fishers exercising their Treaty-reserved fishing rights. Table 3.5 in the Biological Assessment (BA) for this project indicates that project-related barge traffic would nearly double the current volume of barge traffic on the Columbia River. Each additional barge, particularly those in transit during hours of darkness and/or foul weather, represents an increased safety risk

⁶ This is qualified, because there is insufficient information to determine precisely how many fishing sites Ambre's project will destroy.



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to fishers harvesting fish from their nets, operating small boats often times at night and in foul weather. Despite the fact that towboats are required to display lights indicating they are warped to one or more barges, the barges themselves are poorly lit and may obscure the lights of the towboat from the vantage point of a small boat. As tribal fishers may be hampered by foul weather gear, operating at night in otherwise dangerous conditions, and with barge lights obscured or confused by background lighting from Interstate 84 and fixed shore structures, increased barge traffic in the project area will considerably increase the safety risk to tribal fishers. The Application lacks any assessment of this increased hazard to tribal fishers and is thereby deficient. The Corps should not issue a permit without a PEIS addressing this matter comprehensively, and a project-specific EIS that considers safety hazards to tribal fishers.

Coal transportation by rail also poses a potential risk to human health and safety. Currently, there is a real risk of tribal fisherman being harmed or killed by trains traveling through the CRG. This risk would increase significantly with the addition of up to 60 coal trains moving through the Columbia Basin each day. Further, the coal residue that will be accumulating along the rail lines in the CRG poses yet another risk to human health that has not been evaluated in this application. Despite the Applicant's efforts to suppress the production of dust during transport by using surfactants and closed containers, coal will inevitably escape onto the railbed and eventually degrade to dust. Coal dust is a well-documented cause of disease in humans that sometimes results in death. Without adequate identification and analyses of these project-specific and general hazards posed by coal-related projects in the region, the Corps should not permit this Application to move forward.

3. Impacts to Water Quality & Aquatic Species

The BA prepared by Anderson Perry (April 2012) acknowledges that the project would have likely adverse effects on multiple endangered species, though it does not discuss how great those impacts would be or what would be done to mitigate for them. The potential significant increase of inadvertent coal spillage in the Columbia Basin could adversely affect Yakama Nation tribal resources including our tribal fisheries. Toxic effects are both acute and chronic to the Columbia Basins' aquatic food web and culturally important aquatic foods including salmon, sturgeon, and lamprey. Coal is associated with significant environmental problems including acidification of watersheds and metal contamination. Applicant's BA offers alleged assurances that Montana coal is considerably "cleaner" than other kinds but provides no list of contaminants present in the coal to be transported. Moreover, the chemical composition and biological effects of the surfactant sprayed on coal to reduce dust are not disclosed. The lack of this key information precludes a full analysis of potential biological impacts to water quality and associated aquatic biota in the likely event that coal enters the waters of the Columbia Basin. It is likely that this project will result in the contamination of the Columbia River as chunks of coal and coal dust inadvertently fall or spill into the waters of the Columbia Basin from trains traveling through the CRG. In fact, Burlington Northern Santa Fe has stated that up to 500 lbs. of coal per car is lost during rail transportation. Coal would also likely spill into the Columbia Basin during overwater barge loading, barge accidents, or train derailment. All of these types of accidents have been documented at least once and in some cases multiple times in the CRG within the past two



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decades. The probability of future accidents and associated likely effects will significantly increase if this Application is approved, and they should be evaluated separately in a PEIS and for each project-specific review.

4. *Impacts to Habitat*

Along with the toxic properties of coal there are habitat threats associated with the construction of new coal facilities. Construction of the coal-loading facilities will impact habitat for species listed under the Endangered Species Act ("ESA") and will create possible habitat for native and nonnative predators. Destruction of habitat and negative impacts to ESA-listed species must be evaluated and fully considered. While the BA for this project describes in detail the range and nature of potential project impacts to Critical Habitat for ESA-listed species, it also acknowledges that it does not attempt to quantify the biological effects of such impacts on listed species. Absent specific quantitative assessments of project impacts, it is unclear how NMFS can issue a legally sufficient Biological Opinion that includes conservation measures and alternatives to mitigate project impacts. Without a viable BiOp, the Corps should not permit this Application.

In the single instance where quantitative data on biological effects are provided, the BA describes the potential for increased stranding of juvenile salmonids washed ashore in the wake of passing ocean-going vessels that would be associated with the proposed project. Unfortunately, neither the BA nor the cited original paper from which the data are drawn provide enough information to assess the cumulative effects of numerous such strandings over a broad geographic area. But the information given suggests that the effects could be significant and uniformly negative. The magnitude of this impact to listed salmonids and other aquatic resources critically important to the Yakama Nation should be analyzed before any BiOp or permit is issued for the project.

The Corps should consider whether and how this project is compatible with the ongoing regional effort to restore the Columbia Basin for fish and wildlife resources. Despite the BA's assertion of negligible or no project impacts to ESA-listed and other aquatic resources, the project represents an incremental, uniformly negative environmental stressor on an aquatic ecosystem that is already overstressed by existing human development. Allowing this project to move forward would fly in the face of the enormous regional investment in the recovery of our precious natural resources, especially the investment we've made in the salmon and steelhead that are iconic to the Pacific Northwest.

C. Air Quality

The Yakama Nation, federal agencies, and others have worked extensively over the past decade to identify, analyze, and address air quality concerns in the CRG. Through research and monitoring we have found the CRG to have some of the highest levels of air pollution and acid



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rain in the Northwest.⁷ Local coal-fired plants and China's massive coal burning industry have been identified as major sources of this harmful pollution in the CRG.⁸

Toxic pollutants like mercury from burning coal, and other fossil fuels from the diesel-powered locomotives and marine vessels within the CRG, continue to impact the Yakama People and their cultural, historic, and Treaty-reserved resources. Not only is this harmful pollution damaging our sacred and irreplaceable pictographs and petroglyphs, it continues to impact and threaten our People and the resources that we depend on as these contaminants move through the air, water, and soil.⁹

Though not occurring soon enough, the planned closures of the last two remaining coal-fired plants in Oregon and Washington — PGE Boardman and TransAlta — are enormous victories for the region and demonstrates the region's commitment to protecting human health and the environment. Given that we as a region rejected coal-fired plants, we must ask why then would we now allow and facilitate the export of up to 160 million tons of coal to be burned in China each year, only to have its harmful contaminants migrate back to pollute our region? The weekly increase of an additional 11 trains, 12 loaded barge tows from Port of Morrow to Port of Westward, and 3 Panamax ships moving through the Columbia River Basin to Asia from the proposed Coyote Islands Terminal alone, will greatly aggravate the detrimental air emissions and toxic pollutants in the CRG. The cumulative impacts from all 6 proposed coal export terminals would be catastrophic. Given the significant impacts that air pollutants from burning fossil fuels has on our People, cultural heritage and Treaty-reserved resources, it is imperative that the PEIS and project-specific EIS's quantify and analyze the effects of air emissions and associated acid deposition from the transport and burning of coal caused by the Coyote Island Terminal proposal and all others being considered in Oregon and Washington. Additionally, the Yakama Nation expects that transient coal dust from the transport and storage of coal at the transloading facilities will be quantified and its effects on human health and the environment will be fully analyzed.

D. Climate Change

Given all that we know about climate change – its causes and consequences – it is unconscionable to think that we as a country would accept building new infrastructure to export and facilitate the burning of up to 160 million tons of coal each year through ports in Washington and Oregon. This massive proposal is in direct conflict with the federal government's policies

⁷ R. S. Sletten, "The Effects of Air Pollution on Rock Images in the Columbia River Gorge: A Sacred Breath Project of the Yakama Nation" (2011).

⁸ See, Jaffee, D. A. & Reidmiller, D.R., "Now you see it, now you don't: Impact of temporary closures of a coal-fired power plant on air quality in the Columbia River Gorge National Scenic Area." *Atmos. Chem. Phys.* 9, 7997-8005 (2009); Jaffee, D.A. & Strode S., "Fate and Transport of Atmospheric Mercury from Asia." *Journal of Environmental Chemistry* 5(2), 121-126 (2008).

⁹ R. S. Sletten, *The Effects of Air Pollution on Rock Images in the Columbia River Gorge: A Sacred Breath Project of the Yakama Nation* (2011); U.S. Environmental Protection Agency, *Columbia River Basin: State of the River Report for Toxics* (2009).



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and commitment to reduce greenhouse gas emissions and to address and respond to climate change. Beyond policies, we as humans have a moral obligation to make every effort to stop the causes of climate change — such as burning coal — that has already had very real, profound impacts across the globe and especially upon indigenous people.

Climate change jeopardizes the Yakama Nation's traditional ways of life, especially the climate-change impacts upon water — both the quantity and quality — which, in turn, affects changes in flora and fauna in the region. Warming water temperatures associated with climate change have been shown to increase the levels of toxins in water bodies, thus increasing the amount of toxins that are taken up into fish and affecting human health. Research has shown specifically that the accumulation of methylized mercury in our fish and wildlife is linked to rising water temperatures in the Columbia Basin. This is only one example, among many, showing how climate change negatively impacts our people.

The transport and burning of 8.8 million tons of coal per year, as associated with the Coyote Island Terminal transloading facility alone, would have significant greenhouse gas emissions, thus contributing to and exacerbating climate change. The Yakama Nation expects that greenhouse gas emissions and climate change impacts associated with coal export through the Northwest will be quantified and analyzed, both independent of and in combination with all coal export facilities being proposed in Oregon and Washington. These analyses must consider all emissions from rail and barge shipments from Montana and Wyoming to Asia, operations at port terminals, as well as the burning of this coal in Asia.

E. Cultural Resources

Many known culturally sensitive sites are located along the rail routes and within close proximity to the proposed transloading facilities in both Washington and Oregon for the proposed coal transportation/exportation projects. The Yakama Nation is concerned that rail construction, increased barge traffic, and construction of the proposed transloading facilities will impact known archaeological sites, previously undocumented archaeological sites, and Traditional Cultural Properties.

The proposed Coyote Island Terminal is located within an area of extreme cultural sensitivity to the Yakama Nation. Prior to inundation by the dams, the Blalock Islands (including Coyote Island) were a river crossing and ancestral fishing area. Numerous burial sites, legendary sites, and village locations are known within close proximity to the proposed construction. The Coyote Island Terminal is within ¼ mile to the Coyote Island Burial Site, recorded as archaeological sites 45BN77. Though this site has been inundated by the backwaters of John Day Dam, potential impacts remain through construction, sedimentation changes during construction, construction-related dredging and filling, increased barge traffic over time, reservoir management changes required to accommodate increased shipping, and shipping accidents/spills. Further, many cultural sites similar to the Coyote Island Burial Site exist within close proximity and may be impacted by the proposed project.



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The information provided regarding this Application is not sufficient to allow for examination of cumulative effects and impacts of this project on cultural resources over time. We request further information regarding the proposed life of the project, and information regarding the degree of dredge/fill operations for the construction area as well as dredge/fill of the shipping channel over time. Resources, though currently inundated, remain a high concern. Dredging/filling, will greatly impact cultural resources, fish habitat, ancestral fishing sites, Zone 6 Treaty Fishing Sites, and fishing sites throughout the upper and lower Columbia River in use today. We further request information regarding increased infrastructure requirements for overland transportation of coal to the Coyote Island Terminal; as such expansion will further impact these valued resources.

CONCLUSION

The Corps has a duty to ensure appropriate environmental analysis is completed on this Application before it moves forward in any respect. The Nation has considered both the environmental information and legal standards applicable here, and it is clear that a PEIS is warranted in this situation. We urge the Corps not just to take a "hard look" at this Application and its role in the broader plan for transforming our region into a coal hub. We request that you take your trust responsibility to the Yakama Nation seriously, and consider this Application in light of the decades upon decades of destructive waves that have decimated our culture, our people, and our land, water, and air, all advanced in the name of progress. As part of that trust responsibility, your agency has a duty under NEPA to demand a PEIS and a separate project-specific EIS that includes specific analyses of impacts this Application will have on the Yakama Nation. Additionally, your trust responsibility — in addition to federal regulations, policies, and various Presidential executive orders — requires the Corps to consult with the elected officials of the Yakama Nation on a government-to-government level. Thus, as a next step, please contact the Deputy Director of the Yakama Nation Department of Natural Resources to set up a meeting for the government-to-government consultation.

Sincerely,

Harry Smiskin
Yakama Tribal Council Chairman
Confederated Tribes and Bands of the Yakama Nation



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cc:

Governor Chris Gregoire, Washington State
Governor John Kitzhaber, Oregon State

Secretary Ken Salazar, U.S. Department of the Interior
Secretary Ray LaHood, U.S. Department of Transportation

Senator Patty Murray, U.S. Senate
Senator Ron Wyden, U.S. Senate
Senator Maria Cantwell, U.S. Senate
Senator Jeff Merkley, U.S. Senate

Congressman Norm Dicks, U.S. Congress
Congressman Peter DeFazio, U.S. Congress
Congressman Jim McDermott, U.S. Congress
Congressman Doc Hastings, U.S. Congress
Congressman Kurt Schrader, U.S. Congress
Congressman Adam Smith, U.S. Congress
Congressman Earl Blumenauer, U.S. Congress
Congressman Greg Walden, U.S. Congress
Congressman Rick Larsen, U.S. Congress
Congresswoman Cathy McMorris Rodgers, U.S. Congress
Congressman David Reichert, U.S. Congress
Congresswoman Jaime Herrera Beutler, U.S. Congress
Congresswoman Suzanne Bonamici, U.S. Congress

Lisa Jackson, U.S. Environmental Protection Agency
Dennis McClerran, U.S. Environmental Protection Agency
Steve Gagnon, U.S. Army Corps of Engineers
Samuel Rauch III, National Marine Fisheries Service
Will Stelle, National Marine Fisheries Service
Daniel Ashe, U.S. Fish & Wildlife Service
Robyn Thorson, U.S. Fish & Wildlife Service
Tom Tidwell, U.S. Forest Service
Kent Connaughton, U.S. Forest Service
Daniel Elliot III, Surface Transportation Board
Nancy Sutley, Council on Environmental Quality



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

By Electronic (Steven.K.Gagnon@usace.army.mil) Mail

May 3, 2012

Steve Gagnon
Regulatory Project Manager
U.S. Army Corps of Engineers
Portland District
PO Box 2946
Portland, OR 97208

Re: Nez Perce Tribe's comments on the March 6, 2012 Public Notice for Permit Application NWP-2012-56

Dear Mr. Gagnon:

The Nez Perce Tribe appreciates the opportunity to comment on the above-captioned Permit Application. The Tribe is concerned that this project may negatively affect Tribal treaty rights, ESA-listed fish and lamprey and their habitat, Tribal traditional use areas along the coal transportation corridor, tribal cultural resources, and Tribal member health arising from coal dust and diesel pollution. For the reasons below, the Tribe requests that the Corps prepare an Environmental Impact Statement under NEPA as part of its review of the project. The Tribe also requests government-to-government consultation with the Corps on this project consistent with Executive Order 13175, President Obama's November 2009 Memorandum on Consultation and Coordination with Tribal governments, and the Corps' implementing regulations.

Since time immemorial members of the Nez Perce Tribe have used and occupied the lands and waters of north-central Idaho, southwest Washington, northeast Oregon, and portions of western Montana for subsistence, ceremonial, commercial and religious purposes. In Article 3 of the 1855 Treaty with the United States, the Nez Perce Tribe reserved, and the United States secured, the right to take fish and at all usual and accustomed fishing places, and to hunt, gather and pasture on open and unclaimed lands. Treaty of June 9, 1855, with the Nez Perce Tribe, 12 Stat. 957 (1859). The waters within the Tribe's aboriginal territory continue to be used by the Nez Perce. Tribal members exercise their treaty-reserved rights, as well as observe ceremonial, cultural and religious practices within the Columbia River Basin, including usual and accustomed fishing places located within or adjacent to the project area on the Columbia River.

I. Project Description

According to the Public Notice, Coyote Island Terminals, LLC, and John Thomas, Ambre Energy North America are seeking a Corps Section 10 Rivers and Harbors Act permit to construct a new transloading facility for bringing coal in from Montana and Wyoming by rail and transferring it to barges on the Columbia River at the Port of Morrow. The purpose of the project is to “[s]hip coal mined from Wyoming and Montana overseas to Asia.” The coal would be shipped down the Columbia to Port Westward and loaded onto ocean-going vessels to be shipped to Asia. Initially, approximately 3.85 million tons of coal would be shipped through the facility to Asia each year. At maximum capacity, the facility would be able to handle 8.8 million tons. That would translate to approximately 5 trains to Port of Morrow, 5.5 loaded barge tows from Port of Morrow to Port Westward, and one ship to Asia per week initially, increasing to 11 trains, 12 loaded barge tows, and three ships per week to Asia at full build out.

II. Comments

A. Impacts to Tribal treaty rights

The Tribe is concerned that this project will negatively affect tribal treaty rights. The Tribe reserves treaty-fishing rights at all usual and accustomed fishing places, including those places along the Columbia and Snake Rivers and their tributaries. As noted above, the permit application contemplates a significant increase in barge and rail traffic. The Tribe believes that the increase in barge traffic has the potential to directly interfere with tribal treaty fisheries. For example, drifting has become a major component of the commercial fishing in Zone 6 (between Bonneville and McNary Dams). Driftnetting downstream of the Port of Morrow would likely be affected by the increased barge traffic. In addition, the increased rail traffic may affect Tribal member access to usual and accustomed fishing places and other traditional use areas as well as interfere with Tribal member use of those places through increased noise disturbances, coal dust, and diesel pollution.

B. Impacts to ESA-listed fish and lamprey

According to the permit application, preliminary determinations indicate that the described activity may affect an endangered or threatened species or its critical habitat. There are several ESA-listed fish in the project corridor including Lower Columbia River Chinook Salmon ESU, Upper Willamette River Chinook Salmon ESU, Snake River Fall Chinook ESU, Columbia River chum salmon ESU, middle Columbia River steelhead DPS, and lower Columbia River steelhead DPS. These species are of critical importance to subsistence and culture of the Tribe.

In addition, lamprey, although currently are not a listed species, are also located in the project corridor.

C. Impacts to Tribal member health

Given the large amount of coal that is contemplated to be transported by barge and rail in connection with the project, the Tribe is very concerned of the project’s potential impacts to Tribal member health. Coal dust and diesel emissions are known to cause respiratory disease, particularly affecting sensitive populations such as children and the elderly. In addition, the coal dust that settles on the water can have adverse environmental consequences to the river corridor.

Coal dust can affect natural biological processes and can potentially affect fish and other biota that reside in the rivers.

D. Indirect/Cumulative Impacts

Agencies conducting NEPA review must also consider the indirect effects of the proposed project. Indirect effects are those effects “caused by the [agency] action [that] are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Such effects “include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” *Id.*

Cumulative impacts are “the impact[s] on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future can actions regardless of what agency...or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.27(b)(7).

The Corps needs to analyze the indirect and cumulative effects associated with the increased barge and rail traffic the project will create. The Corps should analyze whether and how much dredging needs to occur on the river corridor to accommodate the increased traffic and how this dredging may affect the environment. In addition, the agency should assess the potential effect of accidents on the river caused by the increase in barge traffic. Finally, the Corps needs to analyze the cumulative effect of this project relative to the other coal export or similar projects that are proposed in the region.

E. Environmental Impact Statement

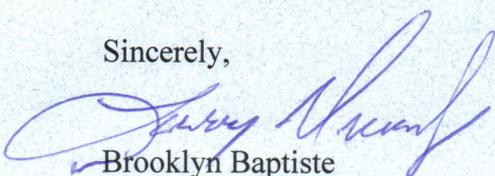
Given the potential impacts to tribal treaty rights, ESA-listed species, Tribal member health, and the indirect and cumulative effects that may result in Columbia River basin and the region, the Tribe requests that the Corps perform a full Environmental Impact Statement under NEPA. All of these issues cannot be properly assessed through an environmental assessment.

F. Conclusion

For the reasons above, the Tribe requests the Corps evaluate the project with an EIS so that a full exploration of the impacts of this controversial project can be thoroughly vetted. As part of this review, the Tribe looks forward to consulting with the Corps on a staff-to-staff and governmental basis before any formal action is taken on the proposal.

Please contact Mike Lopez, Nez Perce Tribal staff attorney, at (208) 843-7355 with any questions.

Sincerely,



Brooklyn Baptiste
Chairman



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

729 NE Oregon, Suite 200, Portland, Oregon 97232

Telephone 503 238 0667

Fax 503 235 4228

May 7, 2012

Colonel John Eisenhower
Commander, Portland District
U.S. Army Corps of Engineers
P.O. Box 2946
Portland, OR 972008-2946

RE: Public Notice for Permit Application, Coyote Island Terminals, LLC. U.S. Army Corps of Engineers No: NWP-2012-56

Dear Colonel Eisenhower:

Since your arrival to the Portland district, I have truly appreciated the partnership and opportunities for collaboration between the U.S. Army Corps of Engineers (Corps) and the Columbia River Inter-Tribal Fish Commission (CRITFC) in the region's efforts to restore salmon and protect our member tribes' treaty fishing rights. The purpose of this letter is to provide CRITFC's comments regarding three project proposals to construct coal export terminals in the Columbia River Basin that threaten the forward progression of these efforts. Specifically, this letter includes our formal comments for one of the projects; the permit application for the Morrow Pacific Project.

CRITFC files these comments on behalf of its member tribes¹ and are in addition to the comments filed by the Yakama Nation and the Confederated Tribes of the Umatilla Indian Reservation, which are hereby incorporated by reference. The CRITFC tribes are very concerned about the Morrow Pacific Project because it will directly and negatively intrude on the tribes' exercise of their treaty fishing rights. The sparse information we currently have raises more questions than answers; it would be premature for the Corps to approve this permit application at this time. There are many other processes that need to occur before any approval is granted, and CRITFC recommends that the Corps suspend action on this permit application at this time.

Since time immemorial, the culture and livelihood of the Columbia River Basin tribes have been closely tied with the river. In the last century of modern development, this connection has been repeatedly broken. In 1977, the tribes resolved to restore fish to the

¹The four member tribes are: the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Nez Perce Tribe, and the Confederated Tribes and Bands of the Yakama Nation. These tribes possess treaty rights to take fish that pass their usual and accustomed fishing places.

river and formed CRITFC to support and collaborate in their efforts to protect, promote, and enhance the anadromous fish resources consistent with their treaties. In the last decade, fish have been returning to the river in ever-increasing numbers and the tribes have been able to restore some of their traditional fisheries, but the balance is still fragile. Projects such as the Morrow Pacific Project will undoubtedly put more pressure on the fisheries and are a major step backward from the forward momentum of current efforts. If other projects proposed for the Columbia River, such as the “Longview Project” (proposed by Millennium Bulk Logistics) and the “St. Helens Project” (proposed by Kinder Morgan) are developed; the pressures on the Basin fish will be substantial. These projects will affect the tribes, and therefore, on behalf of our member tribes and in addition to the formal requests already made, CRITFC requests that the Corps to conduct formal government-to-government consultation on the effects of the Morrow Pacific Project as well as the effects of the other projects.

Environmental Justice and Public Interest

This project raises substantial environmental justice issues; the environmental and other costs will be significant, but the burden of the costs resulting from the projects will not be borne by those who will profit the most. The benefits of these proposals accrue to a only a few, that is, huge profits for large foreign and national coal companies coupled with the creation of few local jobs, whereas the larger burden and costs will be borne first by the tribal treaty fishers, their treaty fisheries, and all the small communities that line the Columbia River Gorge. The Treaty Tribes of the Columbia River Basin are tightly linked to the river, and throughout this century, they, and the salmon, have carried development on their backs. Over the past thirty years, the tribes have worked tirelessly to put fish back in the river with many successes. Approving the Morrow Pacific proposal – and any of the other coal export proposals – would be a significant step backwards for all those efforts.

The evaluation of a River & Harbors Act § 10 permit application must take into account the impacts to the public interest and will “reflect the national concern for both protection and utilization of important resources.” Furthermore, the agency must weigh any benefits from the proposal against reasonably foreseeable detriments. Below we have listed several reasonably foreseeable impacts to our tribes and to the environment from the Morrow Pacific Project. It is clear from this initial list that the public interest would not in any way be served by approving this proposal; not in the short term and definitely not in the long term. In order to discuss these issues on a broad scale and in a transparent, open process, we request that the Corps hold public hearings on this application.

Environmental Review

As the Corps proceeds to the environmental review step in this process, on behalf of the tribes, we encourage the agency to prescribe a broad scope of review of the Morrow Pacific Project to include cumulative effects of both the construction of the dock at Port of Morrow as well as its connecting port at Port Westward. The current documents,

including the applicant's Biological Assessment, do not include very much information on the extent of work needed at the Port Westward site. Port Westward is within the Lower Columbia River Estuary and is near some particularly sensitive critical habitat for several salmonid stocks, including several listed as threatened or endangered under the Endangered Species Act (ESA). Restoration of habitat in the estuary is a key component to many of the anadromous fish processes in the Basin overseen by the National Marine Fisheries Service, or NOAA Fisheries.

CRITFC strongly recommends that the Corps initiate a programmatic environmental review to broadly analyze the other projects in the Basin, i.e., the Longview and the St. Helens projects. While each of these proposals will present unique circumstances, in the aggregate they create similar issues that will have profound detrimental effects to the tribes, the communities and the environment of the Columbia River.

Project proposals within the Northwest region, such as those proposed for Cherry Point, Grays Harbor Washington, and Coos Bay, Oregon, will also have synergistic effects on the Columbia River from increased train traffic to climate change effects.

Regulatory Review

Coal creates a myriad of ill effects on the environment in its removal, transport, and consumption. Of these, the transport and eventual consumption of this coal will create lasting and long-term effects on the Columbia River. Coal's characteristics and values vary according to where it is mined. Coal that is expected to be transported through the Columbia River will originate in the Powder River Basin, and is considered friable and volatile, e.g., easily broken down and easy to catch fire. While the proponent has argued that most of the coal dust "shakes out" within the first miles from its source, the reality is over the course of the long haul the coal will slowly break down into smaller pieces, creating more dust potential. Coupled with the gusty and intense Columbia River Gorge winds, coal dust is not some theoretical possibility, but a reality that tribal fishers have personally experienced with coal trains currently traversing the Gorge. Simply put, the current levels of coal dust are already unacceptable to tribal members living and working along the Columbia River and the railroad tracks that are immediately adjacent thereto. Increasing these impacts would be intolerable.

The Morrow Pacific Project attempts to address this issue by proposing fully enclosed storage and barging. However, the coal trains leading to the port are open. In addition, it is likely that coal dust will escape during the transfer process from the Port of Morrow site to the barge as well as the transfer between the barge and the panamax vessels at Port Westward. As noted in the letter from the U.S. EPA to the Corps (April 5, 2012), there is a potential for adverse effects in air quality from the airborne coal dust as well as the diesel used by the barges and ships.

Coal dust will also enter the river and effect water quality at both the Port of Morrow and Port Westward. While the biological impacts are not well-studied, coal's inherent

properties and the potential for fish ingestion is cause for concern. Since there are many questions and uncertainties, targeted analysis is needed before any permit is issued. We also encourage the State of Oregon to conduct a Clean Water Act section 401 water quality certification process for this project to examine the effects of the project on water quality.

The project will require extensive work in and over water, including building over 200 piles and adding 15,000 square feet of dock. Because of these additions to the Port, we recommend that the Corps require the applicant to apply for a Clean Water Act section 404 permit. While there are other docks at the site, this construction will bring new and expanded use to an area of navigable waters that will affect the flow of the river and will add new fill to the area.

This area is also within Traditional Cultural Property (TCP) designated land and is likely to have significant cultural resources. In addition, and as the application notes, there are ESA-listed aquatic species that migrate near and around the terminal. While the "Joint Permit Application Form" acknowledges these and other issues, it is clear that nothing has been addressed or reviewed in any detail, and none of CRITFC's member tribes have been consulted on any of these very important issues.

Treaty Fishing and Fishery Resources

In 1855, the CRITFC tribes signed treaties with the United States, peacefully ceding title to millions of acres of land in the Basin while reserving their rights to continue fishing at their usual and accustomed fishing places. The rights to access these sites have been fought for and preserved through the court system, and as a result, the tribes' treaty-protected right of access to usual and accustomed fishing grounds is firmly established as a matter of law.² After the construction of The Dalles Dam, and the subsequent flooding of Celilo Falls, the tribes and states agreed that the tribes would have exclusive access to commercial fishing in an area called "Zone 6", a section of the river extending from Bonneville to McNary dams. Tribal fishers conduct year-round subsistence, ceremonial and commercial fishing in that zone with fishing gear types regulated by the tribes but including hoopnets fished from platforms built by tribal members along the river and gillnets anchored to the shore or river bottom.

Shipping traffic has created many safety issues with gillnet fishers, and dock construction along the river has displaced fishing sites within Zone 6. The Port of Morrow is no different. Tribal members from the CRITFC tribes have fishers who lay their nets and make their livelihood within the Port of Morrow. There are numerous other sites within close vicinity up- and down-river from the Port as well. These are tribal people exercising

² The Supreme Court, and other federal courts, confirmed these rights in a number of cases. *See, e.g.,* *Sohappy v. Smith*, 302 F.Supp. 899 (D.Or. 1969), *aff'd*, *United States v. Oregon*, 529 F.2d 570 (9th Cir. 1976); *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979); *United States v. Winans*, 198 U.S. 371 (1905); *Confederated Tribes of the Umatilla Indian Reservation v. Alexander*, 440 F.Supp. 553 (D.Or. 1977).

their tribal treaty rights and projects such as the Morrow Pacific Project will directly and negatively interfere with the exercise of that right.

In addition to directly displacing fishing sites, the project brings concerns of increasing barge traffic by a magnitude of twenty-four barge trips each week. Barge traffic can interfere with fishing as well as be the leading cause of derelict nets, otherwise known as “ghost nets” in which nets are clipped and set adrift. These are very dangerous to aquatic creatures if left uncontrolled.

The Port of Morrow portion of the project is quite extensive and may harm the critical habitat that is designated near both parts of the project, i.e., Port Westward and the Port of Morrow. Before approving this permit application, the Corps needs to conduct significant environmental review, consult with the effected tribes, and initiate consultation with the resource agencies, NOAA Fisheries and U.S. Fish & Wildlife. Only after extensive review, analysis, and study, would it be appropriate to consider the permit application.

Climate Change and the Bigger Picture

Resource managers cannot make management decisions today without analyzing the potential for changes in the Earth’s climate on the resources they are managing. There is no question that coal is a big problem on many levels and for many reasons with relation to climate change. Coal is the leading contributor to atmospheric carbon dioxide and will ultimately cause major effects to the Pacific Northwest. The environmental review needs to consider these potential effects and account for them.

Burning coal also emits significant amounts of mercury and fine particulates, which are known to travel across the Pacific via the “jet stream” from Asia and are deposited in Oregon, Washington, and California. Most of the industrial mercury in the Pacific Northwest comes from these global sources. In 2004, scientists from Oregon State University observed with instruments mounted atop Mount Bachelor's Summit Express ski lift an enormous Asian plume laced with mercury and ozone. The fine-particle concentration of this plume that had transited the Pacific Ocean was about 20 micrograms per cubic meter, compared with the federal air quality standard of an average 65 micrograms during a 24 -hour period. Oregon is already struggling to manage current levels of mercury pollution.

The coal proposed to be shipped through the Port of Morrow and the other proposed Northwest sites would add to this air pollution burden. The proposed development at the Port of Morrow and how it is evaluated by the reviewing agencies will ultimately be a reflection of the seriousness of United States government policy and commitments to reduce greenhouse gases and manage toxic pollutants. We believe that additional levels of air and water pollution associated with the project are not acceptable.

Conclusion

We appreciate your consideration of our comments and are available to answer any questions you have about our concerns. We also look forward to working with you on this project and expanding the analysis if possible. If you have any questions, please feel free to contact me or Julie Carter at 503-238-0667.

Sincerely,

A handwritten signature in blue ink that reads "Babtist P. Lumley". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

Babtist Paul Lumley
Executive Director

Cc: Governor John Kitzhaber, State of Oregon
Governor Christine Gregoire, State of Washington
Lisa Jackson, Administrator, U.S. Environmental Protection Agency
Dennis McLerran, Administrator, Region 10, U.S. Environmental Protection Agency
Steve Gagnon, U.S. Army Corps of Engineers
J.R. Inglis, Tribal Liaison, Portland District, U.S. Army Corps of Engineers
Paul Cloutier, Tribal Liaison, Portland District, U.S. Army Corps of Engineers



Region 10 RTOC

Regional Tribal Operations Committee
"Tribes-RTOC-EPA: Working Together"

Port Graham Village Council, P.O. Box 5510 Port Graham, AK 99603
ph 907-284-2227 fax 907-284-2222 www.rtoctregion10.org

May 15, 2012

Steve Gagnon
U.S. Army Corps of Engineers
P.O. Box 2946
Portland, OR 97208-2946

Kate Kelly, Director
Office of Ecosystems, Tribal and Public Affairs
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

SENT VIA EMAIL

RE: Comments on Project No. NWP-2012-56 (Coal Terminal)

Dear Mr. Gagnon and Ms. Kelley:

This letter is sent on behalf of the Tribal Caucus members of EPA Region 10's Tribal Operations Committee ("RTOC"). This letter is not sent on behalf of EPA Region 10 or any employees of EPA, but solely tribal government representatives of the RTOC.

The intent of this letter is to express support for the April 5, 2012 letter submitted by EPA to the Corps urging that it thoroughly review the potential impacts of exporting large amounts of coal from Wyoming and Montana to Asia. As discussed by EPA, a project at Port of Morrow in Oregon has "the potential to significantly impact human health and the environment." The RTOC strongly agrees that the Corps should utilize the NEPA process to address overall impacts, including impacts to fisheries, cultural resources, the exercise of treaty-reserved rights, increases in greenhouse gas emissions, rail traffic, and mining activity on public lands. .

Given the magnitude of the coal export proposals associated with coal extraction in the Powder River Basin and the significant environmental and human health risks associated with these activities, the RTOC urges that the Corps join with other appropriate federal agencies and immediately begin the process of evaluating the cumulative impacts of coal extraction, shipping, export, and utilization in Asian power plants on human health and the environment through a comprehensive, programmatic Environmental Impact

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May 15, 2012

Statement. This EIS must be completed prior to any decisions are made to permit shipping terminals or additional extraction.

In short, we believe that the Corps should consider the full scope of the impacts of coal to the environment.

The RTOC appreciates your consideration of these comments.

Sincerely,

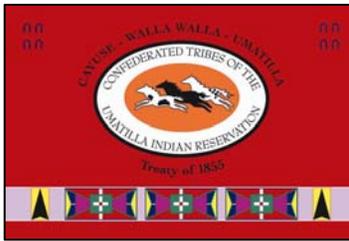
/s/

Violet Yeaton
Region 10 RTOC
Tribal Caucus Co-chair

Cc: RTOC

Confederated Tribes *of the*
Umatilla Indian Reservation

Department of Natural Resources
Administration



46411 Timine Way
Pendleton, OR 97801

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

March 28, 2012

Steve Gagnon
Regulatory Project Manager
U.S. Army Corps of Engineers
Portland District
PO Box 2946
Portland, OR 97208

Submitted electronically to: Steven.K.Gagnon@usace.army.mil

Dear Mr. Gagnon:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to comment on application NWP-2012-52. The CTUIR DNR has concerns that this project may impact Tribal treaty fisheries, nearby Tribal properties as well as traditional use areas, habitat and cultural resources along the rail transport corridors. Further, the CTUIR has concerns regarding the cumulative impacts of this project and others proposed in the area.

After careful consideration of the significant Tribal interests within our ceded, special use, and Tribally-owned lands, we recommend that the Corps of Engineers (Corps) undertake an Environmental Impact Statement (EIS). The EIS should include adequate information for the Corps and the CTUIR to make an informed judgment of the impacts to treaty rights, traditional use areas and other interests. We formally request consultation on a government-to-government basis concerning the impacts of this permit.

Due to the short timeframe for comments, DNR has prepared this letter documenting preliminary concerns. We look forward to working on this project with the Corps as the project develops and the National Environmental Policy Act (NEPA) documentation is prepared.

Fishing Site Impacts

The CTUIR holds treaty protected fishing rights at all usual and accustomed stations. These places include the Columbia River corridor and many of its tributaries. The proposed dock site is a usual and accustomed fishing station, but the overall project would also impact fishing stations downstream due to the increase in project related barge and train traffic.

The CTUIR worked with the Corps on the Willow Creek Barge Dock, NWP-2006-160. The revised Environmental Assessment, issued April 4, 2008, includes useful information regarding

the fishing issues presented by this application. The CTUIR intends to work with our Tribal fishermen to document their use of this area including timing and frequency.

The proposal also involves increasing the lockages on the Columbia River in Zone 6 between Bonneville and McNary dams. This increase would be between 550 and 1257 per year. However, it is unclear that there is an upper limit of barge lockages under the permit. Will there be a defined upper limit on the number of barge trips per year? Fishermen have reported that recently barges are entering areas where previously there was no barge traffic. This may be due to barge congestion or other factors. The Corps should quantify barge traffic on the Columbia and identify the potential impacts from increasing traffic at the dams. We note that 10 years ago there were roughly 1000 more lockages a year at the John Day dam. However, over the last 10 years fish runs have increased as have the number of fishermen and nets on the river. Documentation of barge/net interference over time would aid analysis of potential impacts.

Additionally, in 2008, the National Oceanic and Atmospheric Administration conducted a section 7 Endangered Species Act review of barge transport of baled municipal waste from Hawaii by way of barges up the Columbia River. This review was inadequate in many ways, not the least of which was the failure of NOAA to consult with the CTUIR. However, the review did analyze the impacts of the entire route of shipment of municipal waste from Hawaii to landfills in the northwest including ocean species impacts. Since the barges will be going to Asia, it is logical that NOAA be consulted regarding ocean impacts. Further, while the NOAA assessment determined there would be no impact to fisheries by the barges, that project included only 100 barges per year transporting garbage. This project has the potential for more than ten times that many barges. Analysis should also include potential barge accidents.

Cumulative Impacts

The shipment of hundreds of barges of coal down the Columbia River, coupled with other proposed projects such as the barging of municipal waste from Hawaii and the ZeaChem plant immediately adjacent to this project, necessitates analysis of the cumulative increase in barge traffic and the associated impacts. This impact will not just be on fishing sites or aquatic species, but traffic congestion on the river and the dam lockage infrastructure. The EIS would benefit from a discussion of the carrying capacity of the river for shipment of goods and materials.

Cultural Resources

In your February 27, 2012 email regarding this undertaking, you state, "The Corps believes this project will have No Effect to cultural resources based upon our review of available information. We reviewed Branch files and records, the latest published version(s) of the National Register, lists of properties determined eligible, and other appropriate sources of information in making our determination." The CTUIR Cultural Resources Protection Program (CRPP) believes that finding is premature and incorrect.

CTUIR DNR Letter to Corps of Engineers
Re: NWP-2012-56, Port of Morrow Coal Barge Dock
March 28, 2012
Page 3 of 4

Branch files should include site records for site 35MW13, which is both inundated by the John Day Reservoir and along the shoreline. This site has been recommended eligible for inclusion in the National Register of Historic Places. The proposed undertaking will certainly affect the site, and that effect will likely be adverse.

Branch files should also include a document by Teara Farrow and Thomas Morning Owl entitled *Addendum to the Identification of TCPs along Bonneville, The Dalles, and John Day Reservoirs*. This document was prepared for and submitted to the Corps Portland District in 2001. It identifies the Port of Morrow area as being located within Traditional Cultural Property 3. On what basis has your staff determined that the proposed undertaking will not affect this historic property?

Your email also describes the permit area as extending “from the Port of Morrow to Port Westward in light of increases in barge traffic due to the project.” As you know neither the CTUIR nor the Advisory Council on Historic Preservation recognize Appendix C or the term “Permit Area” as being in compliance with National Historic Preservation Act (NHPA). To adequately address the permit application the CRPP will need a map of the area of potential effects (APE; including how far inland it extends) and a summary description of the potential effects the proposed undertaking will have on historic properties. This information will help us determine whether the proposed APE is appropriate. Please note that there are several parcels downstream on the Columbia River from the Port of Morrow which are held in trust for several tribes. Those parcels are overseen by Tribal Historic Preservation Offices (THPOs) rather than the State Historic Preservation Office (SHPO). Please make sure that you initiate consultation with the THPOs as well as the SHPOs for this undertaking.

In addition, as discussed below, the APE for this undertaking should include the rail transit, which passes adjacent to additional trust land and through additional traditional use areas. Information pertaining to changes in rail usage is necessary to assess the effects the proposed undertaking will have on those properties.

To conclude, the CRPP disagrees with your finding of effect for this undertaking and we require additional information regarding the APE. We look forward to further consultation to resolve these issues.

Air Quality

The CTUIR understands that much of the conveyance system for coal is going to be enclosed, limiting the release of coal dust. However, to what degree can/will the Corps mandate that the facility will not produce coal dust? Will there be air quality monitoring of all loading/offloading/transloading activities on the river? Will air releases of coal dust be reported? The CTUIR DNR requests a study documenting the impacts of coal dust release be conducted and the NEPA documentation identify release thresholds requiring environmental review. It is the hope of the CTUIR that there be as many protections as possible to prevent the release of

CTUIR DNR Letter to Corps of Engineers
Re: NWP-2012-56, Port of Morrow Coal Barge Dock
March 28, 2012
Page 4 of 4

toxics into the river, including coal and coal dust. Additionally, information regarding air emissions of barge and rail traffic should be discussed.

Tribal Property

As noted above, the Area of Potential Effect/Permit Area impact analysis will be inclusive of the area between Port of Morrow and Port Westward, where the coal will be transloaded to the ocean-going barge. The CTUIR DNR recommends that the minimum area of the impact analysis should include both the transloading/barging activities as well as the associated rail transportation corridor traffic.

We are concerned about the associated rail transport impacts to Tribal properties, and traditional use areas. The CTUIR owns property near the applicant's proposed site. The property, referred to as Wanaket, has the Burlington Northern rail line along its southern boundary. The property came into CTUIR ownership as one measure to specifically to mitigate for impacts to CTUIR treaty rights caused by the Corps and Bonneville Power Administration's hydropower impacts and operations. The CTUIR actively manages Wanaket for the preservation and enhancement of wildlife and related habitat purposes. Increased train travel will impact...?

Government-to Government Consultation

The CTUIR requests consultation on a government-to-government basis with the Corps on this permit. The Corps should provide adequate information to the CTUIR to make an informed analysis regarding its concerns and interests, as well including the CTUIR in the development of the NHPA and NEPA analysis of this permit.

Our designated staff member for coordination issues is our DNR Intergovernmental Affairs staff member, Audie Huber -- audiehuber@ctuir.org or (541) 429-7228.

Sincerely,



Eric Quaeempts, Director
Department of Natural Resources

Cc: Chris Page, Corps Regulatory Archaeologist
Gail Celmer, Corps Division Archaeologist
Dennis Griffin, Oregon SHPO
John Pouley, Oregon SHPO



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

RECEIVED

JUL 12 2013

**DEPT. OF ARCHAEOLOGY &
HISTORIC PRESERVATION**

JUL - 9 2013

Regulatory Branch

Allyson Brooks, Ph.D.
State Historic Preservation Officer
Department of Archaeology and Historic Preservation
P.O. Box 48343c
Olympia, Washington 98504-8343

Reference: NWS-2008-0260
Gateway Pacific Terminal
Section 106 Initiation

Dear Dr. Brooks:

The U.S. Army Corps of Engineers (Corps) Regulatory Branch has received a permit application from Pacific International Terminals, Inc. (PIT) associated with the Gateway Pacific Terminal (Terminal) project located at Cherry Point in Whatcom County, Washington, west of Ferndale and adjacent to the Strait of Georgia (see Enclosure 1 for location). The purpose of this letter is to initiate Section 106 consultation and review, consult on the area of potential effects (APE), and to gather information that will assist the Corps in identifying historic properties.

The proposed work includes construction of a new pier in marine waters and associated rail and cargo handling facilities on uplands. Construction of project facilities will affect waters of the U.S., including wetlands, and therefore requires a Department of Army (DA) individual permit under Section 404 of the Clean Water Act, and a DA permit for construction in navigable waters under Section 10 of the Rivers and Harbors Act. The proposed Terminal would involve development of approximately 350 acres of a 1,500-acre project area, and would include a three-berth, deep-water wharf capable of berthing Panamax and Cape-sized dry bulk carriers. The proposed wharf would be approximately 3,000 feet long and 105 feet wide accessing 80-foot water depth, and would be connected to the shore by an access trestle approximately 50 feet wide and 1,600 feet long (approximately 1,100 feet long from the shoreline). Landside facilities would include open air and covered bulk commodity storage, each serviced by an on-site rail loop. A system of covered conveyors would connect the commodity storage areas to the access trestle and wharf. The Terminal would contain materials handling equipment for unloading railcars to storage and loading vessels, service buildings, stormwater treatment facilities, roadways, and other utility infrastructure. Extensive excavation (approximately 3.4 million cubic yards of cut and fill) is proposed within the 350-acre facility area. Approximately

300 acres would be developed for wetland and stream creation and enhancement and an additional 440 acres is proposed for preservation, for a total mitigation area of approximately 740 acres.

The Corps is defining the APE to include the entire 1,500 acre project area. A map of the APE is enclosed for your review and comment. As the Section 106 process proceeds, we will take into consideration comments you sent in a letter dated November 28, 2012 as part of your NEPA/SEPA review (DAHP Log. No. 092611-10-COE-S; attached). We are reviewing and processing BNSF Railway's Custer Spur permit application separately (Corps Reference No. NWS-2011-325).

On August 24, 2012 the Advisory Council on Historic Preservation indicated that they will be participating in the Section 106 consultation "in response to concerns expressed by the Lummi Indian Tribe."

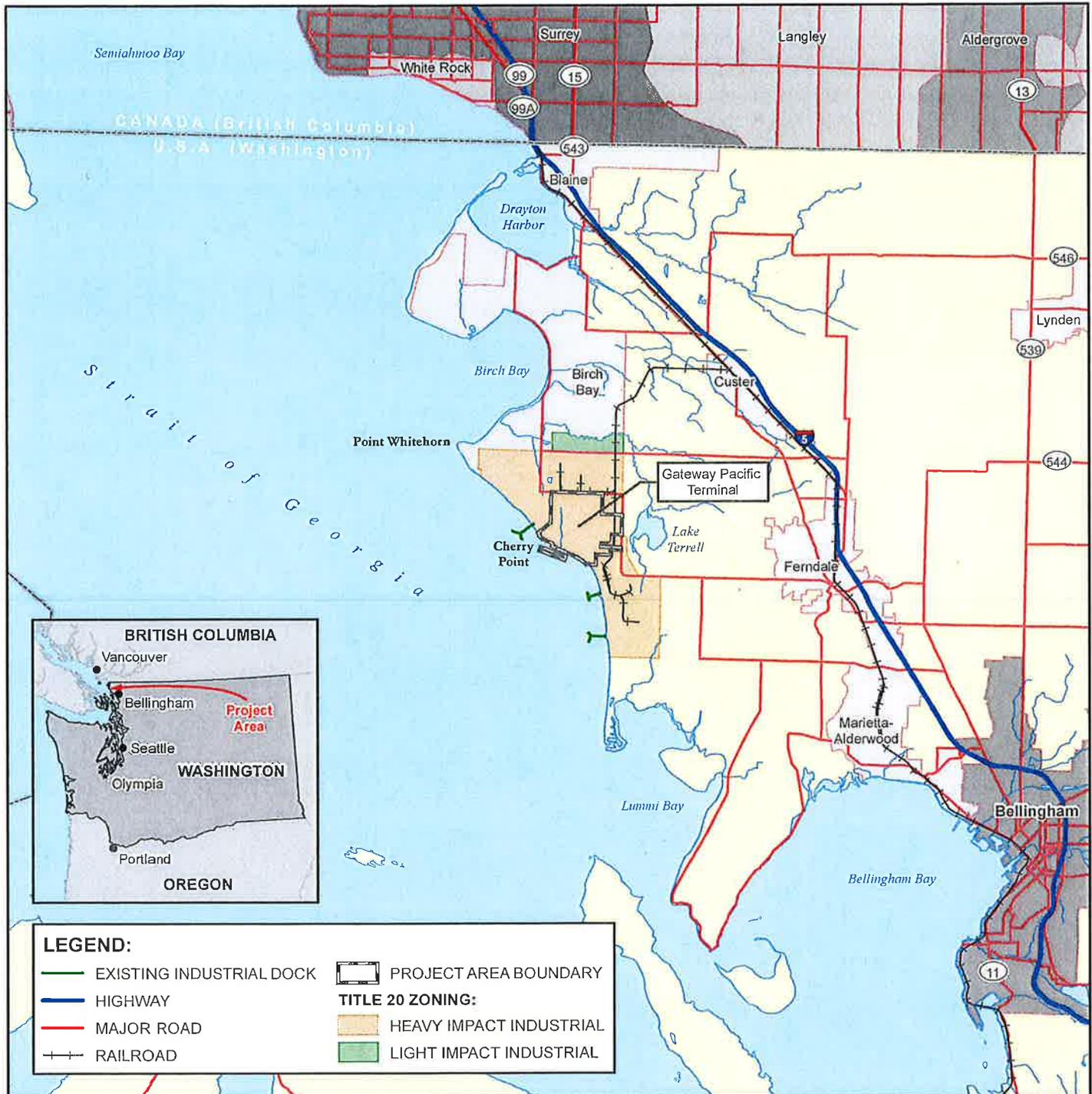
The Corps requests your comments on the APE and seeks comments that will assist us in identifying historic properties. If you have any questions or desire additional information, please contact Mr. Lance Lundquist, Corps Archaeologist at lance.a.lundquist@usace.army.mil or (206) 764-6909, or me at paul.c.jenkins@usace.army.mil or (206) 764-6941.

Sincerely,



Chris Jenkins
Cultural Resources Program Manager
Regulatory Branch

Enclosure



LEGEND:

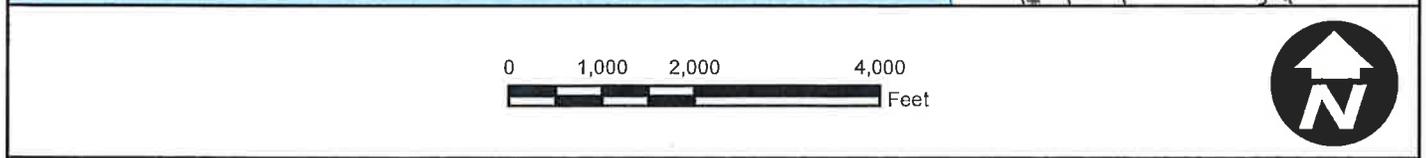
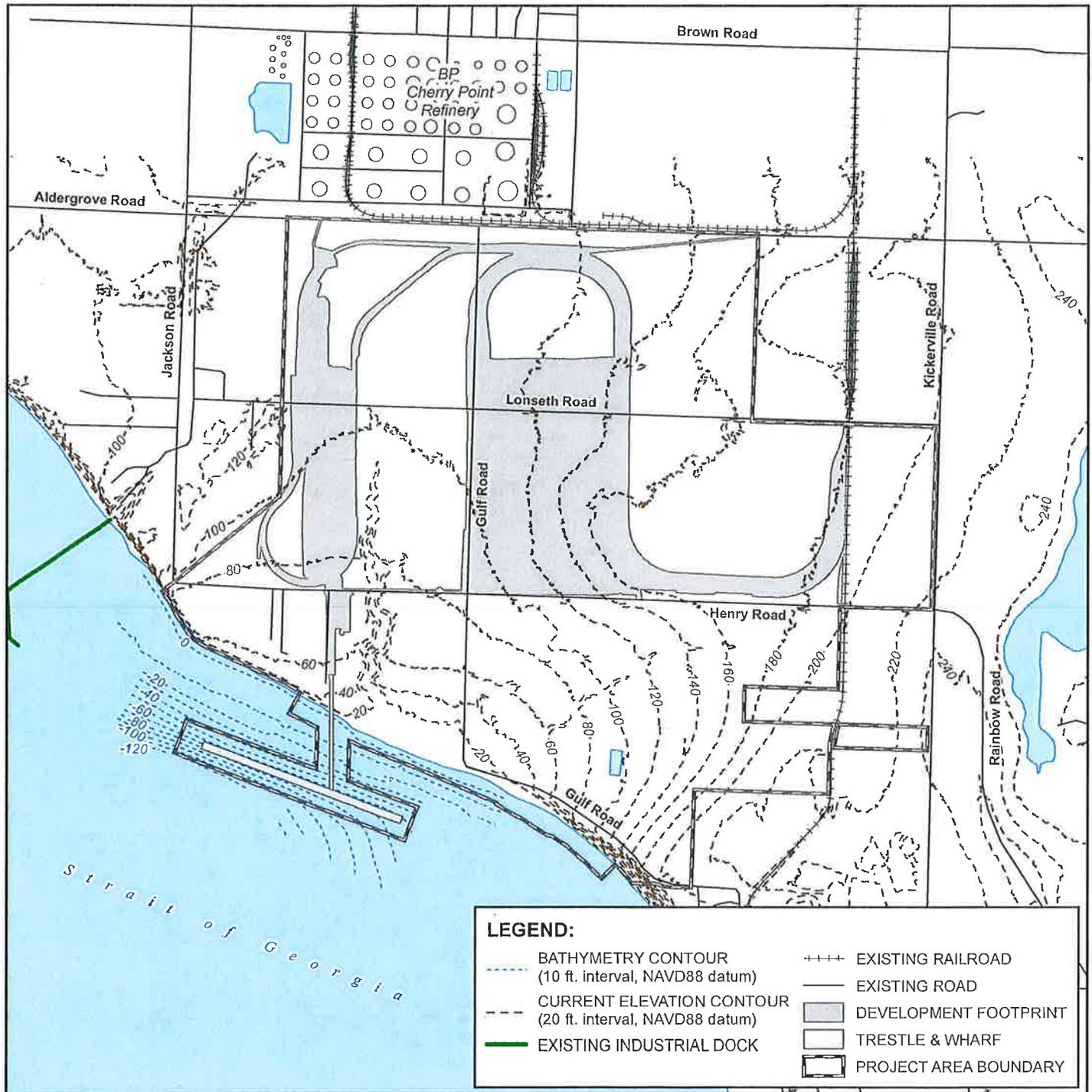
- EXISTING INDUSTRIAL DOCK
- HIGHWAY
- MAJOR ROAD
- RAILROAD
- PROJECT AREA BOUNDARY

TITLE 20 ZONING:

- HEAVY IMPACT INDUSTRIAL
- LIGHT IMPACT INDUSTRIAL



 Pacific International Terminals <small>AGRI-ET-10-10</small>		CLIENT: PACIFIC INTERNATIONAL TERMINALS, INC.				
		PROJECT:	GATEWAY PACIFIC TERMINAL		DWN BY: SD	DATUM: NAD83
TITLE:	VICINITY MAP		CHK'D BY: KD	REV. NO.: 1	PROJECT NO.: 091515338C-13-11	
			PROJECTION: WA SP North, Ft.	SCALE: 1 inch=3 miles	FIGURE NO.: FIGURE 1	



	 Pacific International Terminals <small>A CORPUS CHRISTI COMPANY</small>	CLIENT: PACIFIC INTERNATIONAL TERMINALS, INC.
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PROJECT: GATEWAY PACIFIC TERMINAL	DWN BY: SD	DATUM: NAD83	DATE: JUNE 2013
TITLE: PROJECT AREA	CHK'D BY: KD	REV. NO.: 1	PROJECT NO.: 091515338C-13-11
	PROJECTION: WA SP North, FL	SCALE: 1 inch=2,000 feet	FIGURE NO.: FIGURE 2



STATE OF WASHINGTON

DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

1063 S. Capitol Way, Suite 106 • Olympia, Washington 98501

Mailing address: PO Box 48343 • Olympia, Washington 98504-8343

(360) 586-3065 • Fax Number (360) 586-3067 • Website: www.dahp.wa.gov

November 28, 2012

Mr. Randel Perry
Regulatory Branch
Seattle District, Corps of Engineers
PO Box 3755
Seattle, Washington 98124-3755

Re: Gateway Pacific Terminal & Custer Spur Project
Log No: 092611-10-COE-S

Dear Mr. Perry:

We want to thank you and Ms. Jodi Ketelsen for providing the Agency Scoping NEPA/SEPA documents for the proposed Gateway Pacific Terminal & Custer Spur Project Modification in Washington.

We offer the following comments for consideration in developing the Environmental Impact Statement:

- We believe a robust cultural resources study effort is necessary given the known and potential archaeological, historic, and traditional cultural resources documented in the identified Study Area.
- We are supportive of the Agencies identification of Cultural Resources as a Topic in the List of Commitments.
- Given this recognition of the importance of cultural resources, we believe to effectively craft the contents of the Cultural Resources section, will require the agencies to implement a proactive consultation plan to assure all the affected communities are identified early and are offered an informed consultation regarding the cultural resources that are at risk and methods to avoid, minimize, or mitigate impacts.
- This especially includes the Rail Routes in Washington State identified in your presentation and the potential impact upon National Register listed or eligible historic districts, Main Street program communities, and those jurisdictions with local historic preservation programs (i.e. Certified Local Governments) that may have locally designated historic properties located along the routes and the potential socioeconomic impacts to these resources. This analysis should examine both short and long-term effects of the construction and operation of the rail routes upon the viability and livability of affected areas.



DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

Protect the Past, Shape the Future