



## The Seattle Human Rights Commission

1963 – 2013 ▪ 50<sup>th</sup> Anniversary

January 21, 2013

GPT/BNSF Custer Spur EIS Co-Lead Agencies  
c/o CH2M HILL  
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Bellevue, WA 98004

Randel Perry  
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Army Corps of Engineers  
1440 10th Street, Suite 102  
Bellingham, WA 98225

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Northwest Regional Office  
Washington Department of Ecology  
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Tyler Schroeder, Planning Supervisor  
Planning and Development Services  
Whatcom County  
5280 Northwest Drive  
Bellingham, WA 98225

**Re: Scoping Comments on the Gateway Pacific Coal Export Terminal at Cherry Point**

Dear Ms. Kelly, Mr. Perry, and Mr. Schroeder:

The Seattle Human Rights Commission urges a comprehensive review of the proposed coal terminals combined environmental, health, and human rights consequences. If the terminal is approved, the environmental, traffic, and health impacts would be far-reaching and geographically dispersed. We believe that such a comprehensive review of the project is appropriate because health and environmental harms do not recognize or respect geographic boundaries, and because environmental harms threaten important and universal human rights.

The Commission further believes that the scope of the review should include an assessment of the regional impact of coal shipment on human rights, including rights recognized in the Universal Declaration of Human Rights and other key documents such as the U.N. Declaration of the Rights of Indigenous Peoples. We have attached our Resolution 12-5 in support of this letter.

The Seattle Human Rights Commission was founded in 1963 to protect and advocate for the human rights and equal treatment of all people who live and work in Seattle. The Commission advises the City on human rights and discrimination against all persons. The Commission believes that human rights are those fundamental rights which are necessary for all people to enjoy if the inherent dignity and value of each human being is to be respected. Seattle is a Human Rights City and has committed itself to respecting and promoting the human rights enumerated in the Universal Declaration of Human Rights.



*Environmental Harm is a Human Rights Issue*

Our recommendation is based on the recognition that a number of important human rights are adversely affected by environmental harms. These include the right to life, the right to health, and the right to clean and safe water. As a result, the principle that “all individuals are entitled to live in an environment adequate for their health and well-being” is now widely recognized<sup>1</sup> and the international community has embraced the idea that the full enjoyment of human rights requires addressing environmental problems. For example, the U.N. Commission on Human Rights consistently recognizes that environmental violations “constitute a serious threat to the human rights to life, good health and a sound environment for everyone.”<sup>2</sup> Increasingly the international community also calls upon States to take all necessary measures to protect the legitimate exercise of everyone's human rights by protecting the environment.

Furthermore, the Commission believes that climate change is a human rights issue. And that Seattle, as a human rights city, has an obligation to oppose projects, such as the interstate shipment of coal through the Cherry Point Terminal, that violate human rights and exacerbate climate change.

*The Mining, Transport and Combustion of Coal Cause many Environmental Harms that Threaten Human Rights in the Pacific Northwest and Across the Globe*

The mining, transport and combustion of coal cause numerous environmental problems that adversely affect human health. The proposed terminals' regional effects stem mainly from the transportation of coal, but it is worth noting that the environmental harms associated with the mining and burning of coal imperil important human rights across the globe. For example, coal-fired power plants are the largest single source of carbon dioxide emissions in the United States, emitting as much as all modes of transportation combined and contributing importantly to global climate change.<sup>3</sup> Coal combustion also produces a number of air and water pollutants, including carbon monoxide, nitrogen oxides, sulfur oxides, and hydrocarbons. These pollutants exacerbate respiratory illnesses and increase birth defects and premature deaths.

After combustion, coal ash and sludge is often disposed of in unlined and unmonitored landfills and reservoirs; heavy metals and toxic substances contained in this waste frequently contaminate drinking water supplies and harm local ecosystems. Coal dust can lead to pneumoconiosis, bronchitis, and emphysema. The transport of coal from Wyoming and Montana also involves train and ship and barge diesel pollution. Diesel emissions can cause respiratory disease and may be carcinogenic.

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<sup>1</sup> United Nations Commission on Human Rights Resolution 1991/44.

<sup>2</sup> United Nations Commission on Human Rights Resolutions 1999/23, 2000/72, 2001/65, 2005/57, 2005/60.

<sup>3</sup> Union of Concerned Scientists at [http://www.ucsusa.org/clean\\_energy/our-energy-choices/coal-and-other-fossil-fuels/the-costs-of-coal.html](http://www.ucsusa.org/clean_energy/our-energy-choices/coal-and-other-fossil-fuels/the-costs-of-coal.html)



*Many of these environmental harms do not respect geographic boundaries.*

The release of carbon dioxide into the atmosphere likely exacerbates rising sea levels that can cause harm in any coastal region. Similarly, transporting coal to China has the potential to raise levels of mercury in U.S. waters. The far-reaching nature of coal's adverse environmental impacts underscores the need for a comprehensive review of the proposed terminal's consequences in and beyond the region.

The most immediate and direct regional effect of the proposed terminals would be the increased transport of coal. Coal transportation has many significant environmental impacts. Currently, it accounts for about half of U.S. freight train traffic. These trains, as well as the trucks and barges that transport coal, run on diesel fuel — a major source of nitrogen oxide and soot. The scale of the proposed terminal would require a dramatic increase in the number of diesel-burning locomotives and vessels, which would in turn affect Puget Sound air sheds. Diesel particulate matter is associated with both pulmonary and cardiovascular issues, including cancers, heart disease, and asthma. The transportation of coal will thus adversely affect the environment and adversely impact important human rights.

In addition, because most coal trains are uncovered, they produce significant amounts of coal dust. Coal dust is notoriously difficult to control. BNSF Railway estimates that each uncovered car loses between 500 and 2000 pounds en route. If the terminal is approved, more coal dust would be released into the air, onto the land, and into the water from the storage facility at the terminal site. The release of this dust into the atmosphere also poses significant environmental and health risks.

An increase in the number of long trains at rail crossings will mean delayed emergency medical service response times, as well as increased risk of accidents, traumatic injury and death. For example, a City of Seattle study of the proposed terminals' traffic impacts found that building the nation's largest coal export terminal outside of Bellingham could delay traffic in Seattle at eight key points by one to three hours, significantly impacting commuter traffic and emergency vehicles' response times.<sup>4</sup> The impact on emergency vehicle response times in Seattle and elsewhere raises important human rights concerns.

*The Right to Work is an Important Human Right – But We Need Jobs in Industries that Promote and Protect Human Rights*

Some supporters of the proposed terminal argue that the need to create jobs outweighs concerns about the terminals' environmental impacts. The right to work is indeed an important human right, and guarantees the opportunity to have fulfilling and dignified work under safe and healthy

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<sup>4</sup> See <http://www.seattle.gov/mayor/media/PDF/121105PR-CoalTrainTrafficImpactStudy.pdf>



conditions, with fair wages affording a decent living for oneself and one's family. It also provides for freedom from unemployment and the right to organize.<sup>5</sup>

Although we concur that the right to work and the need for jobs are paramount, we do not believe that the pressing need for jobs should lead states to neglect their efforts to protect the environment and mitigate the extent to which environmental harms threaten important human rights. Rather, governments can and should develop policies that promote public and private investment in clean technology, which in turn increases employment in “green” jobs.<sup>6</sup> Such policies would simultaneously support the human right to work and the right to life, health, and safe water.

### *Impact on Indigenous Rights*

The United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) recognizes that “that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.”<sup>7</sup> UNDRIP further recognizes that Indigenous people have rights to practice and protect their culture.<sup>8</sup> The Commission believes that man-made climate change directly affects the spiritual life and cultural identity of indigenous peoples. Indigenous peoples are the most vulnerable to climate change and their right to “maintain and strengthen their distinctive spiritual relationship” with their lands are at stake.<sup>9</sup>

Another central principle of UNDRIP is that a state actor must consult and cooperate with tribes when taking actions that affect those rights.<sup>10</sup> UNDRIP further requires states to respect and honor treaties.<sup>11</sup> These standards require close coordination with the affected tribes in the region.

The Commission believes that taken as a whole, the UNDRIP standards requires the Corps, the State of Washington, and Whatcom County to consider the additional impacts of the shipping facility and the interstate transport of coal on Native American cultural resources, including sacred sites, vegetation used in traditional medicines, animals hunted or fished traditionally, and fish habitat guaranteed by treaties with the United States.

The shipment of coal and the construction of multiple coal port facilities impact tribal lands and the health and well-being of tribal citizens living on those lands. UNDRIP provides that “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.”<sup>12</sup> UNDRIP also provides that

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<sup>5</sup> See, for example, Articles 6, 7, 8, and 10 of the International Covenant on Economic, Social, and Cultural Rights.

<sup>6</sup> See <http://www.dblinvestors.com/wp-content/uploads/2012/09/Red-White-Green-whitepaper-webresolution1.pdf>

<sup>7</sup> The United Nations Declaration of the Rights of Indigenous Peoples, Preamble.

<sup>8</sup> Ibid, Article 31.

<sup>9</sup> Ibid, Article 25.

<sup>10</sup> Ibid, Articles 18, 19, and 32(2)

<sup>11</sup> Ibid, Article 37.

<sup>12</sup> Ibid, Article 29(1).



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“Indigenous people have an equal right to the enjoyment of the highest attainable standard of physical and mental health.”<sup>13</sup> We believe that the Corps, the State of Washington, and Whatcom County should consider these rights when evaluating the impacts of the proposed activity in preparation of an Environmental Impact Statement.

The Commission further believes that regardless of the ultimate scope of the Environmental Impact Statement, that the Corps has a duty to extensively consult and cooperate with Indian tribes in Washington regarding the impact of development and coal transport on the tribes’ natural resources and cultural traditions. This duty arises out of Presidential Executive Order 13,175 (2000) which requires federal-tribal consultation on projects affecting Indian tribes, Executive Order 13,007 (1996) which protects access to, and the integrity of, tribal sacred sites, the U.S. Department of Defense’s American Indian and Alaska Native Policy and Instruction Number 4710.02, and President Obama’s Executive Memorandum on Tribal Consultation (2009) which reaffirms Presidential Executive Order 13,175.

### **Conclusion**

The Commission urges the Corps, the State, and Whatcom County to please consider the impacts of the proposed coal terminals and coal transportation on human rights. Thank you for your consideration of our comments.

Sincerely,

Chris Stearns, Chairman

Prof. Katherine Beckett, Commissioner

Attachment: SHRC Resolution 12-5

Cc: Mayor Mike McGinn, City of Seattle  
Council President Sally Clark, City of Seattle  
U.S. Rep. Jim McDermott  
U.S. Rep. Adam Smith  
U.S. Senator Patty Murray  
U.S. Senator Maria Cantwell

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<sup>13</sup> Ibid, Article