



Mr. Randel Perry, U.S. Army Corps of Engineers, Seattle District  
c/o GPT/BNSF Custer Spur EIS Co-Lead Agencies  
1100 112<sup>th</sup> Avenue Northeast, Suite 400  
Bellevue, Washington 98004

January 16, 2013

Dear Mr. Perry:

On behalf of Northern Plains Resource Council (Northern Plains) members, I am submitting the following scoping comments to the U.S. Army Corps of Engineers (Corps) in response to its September 21, 2012, Notice of Intent (NOI) to prepare an environmental impact statement (EIS) on the application from Pacific International Terminal, Inc. for the Gateway Pacific Terminal (GPT) and Burlington Northern Santa Fe (BNSF) Railway's Custer Spur rail expansion projects. These comments are submitted in an effort to aid the Corps and the other co-lead agencies in identifying issues that we believe should be addressed in the EIS. Please ensure that our comments are entered into the public record.

Northern Plains is a grassroots conservation and family agriculture non-profit organization based in Billings, Montana. Northern Plains organizes Montana citizens to protect our water quality, family farms and ranches, and unique quality of life. Northern Plains is dedicated to providing the information and tools necessary to give citizens an effective voice in decisions that affect their lives.

Northern Plains formed in 1972 over the issue of coal strip mining and its impacts on private surface owners who own the land over federal and state mineral reserves as well as the environmental and social impacts of mining and transporting coal. Many of our members own farms and ranches in southeastern Montana, which is part of the Powder River Basin (PRB) where the coal slated for export from the West Coast is being mined and where there are proposals for development of new coal mines. Clean air and water, native soils and vegetation, and lands that remain intact are critical to our members' livelihoods, thus, the mining of coal has significant on-the-ground impacts for our members as well as other Montanans.

The proposed rail transport of PRB coal from and through Montana would bisect and disrupt individual ranches that have existed sustainably for more than 100 years. Many more of our members and other Montanans live along and near the railroad lines that traverse our state and will be the conduits for the millions of tons of coal proposed for shipment from the PRB to the West Coast for export to Asia.

The NOI states that one of the potentially significant issues to be analyzed in the EIS is "railroad and vehicle traffic." This issue (as well as others) obviously extends beyond the confines of the current port facility and proposed GPT/BNSF Custer Spur expansions at Cherry Point in Bellingham. We believe that the Corps recognizes this fact because it held one of the scoping hearings for the proposed project in Spokane, Washington, a community at the far eastern border of the state, 360 miles from the coast and the port facility. It is well-known that this community would be significantly impacted – just like Billings, Montana – by **all** the increased coal train traffic from the PRB if the GPT and the BNSF Custer Spur expansion projects are approved and built.

More than 50 Northern Plains members and other Montanans traveled to Spokane on December 4, 2012, to attend that public scoping hearing to make clear to everyone that the coal trains hauling America's energy resources to the West Coast for export to China do not magically appear at Spokane or even the Washington/Idaho border. These coal trains come from and through our state, and the impacts that Montanans would experience from increased coal train traffic are the same as those that would be experienced by Washingtonians living along the rail lines in that state.

The proposed project's impacts are real and significant to Montanans, and are a connected and cumulative result of what happens at Cherry Point. **The EIS being prepared by the Corps and its partners for the GPT/BNSF Custer Spur expansion projects MUST include the connected and cumulative impacts that increased coal train traffic will have and cause all the way back through Montana to the PRB coal mines in Montana and Wyoming.**

As a reminder, the National Environmental Policy Act (NEPA) requires, through the Council of Environmental Quality's (CEQ) NEPA implementing regulations, that an agency must analyze any proposal in consideration of other actions that are connected (40 C.F.R. §1508.25(a)(1)) and are cumulative (40 C.F.R. §1508.7, §1508.25 (a)(2)).

Specifically, "connected actions" are defined as:

- those that are closely related and automatically trigger other actions that may require EISs;
- those that cannot or will not proceed unless other actions are taken previously or simultaneously; or
- those that are interdependent parts of a larger action and depend on the larger action for their justification.

The Ninth Circuit Court of Appeals has explained that "[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement" (*Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 998). "The purpose of this requirement is to prevent an agency from dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact" (*Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 [9<sup>th</sup> Cir. 2006]). In determining whether there is a connection between projects, this circuit employs an "independent utility" test (*Wetlands Action Network v. U.S. Army Corps of Eng'rs*, 222 F.3d 1105, 1118 [9<sup>th</sup> Cir. 2000], *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 [9<sup>th</sup> Cir. 2011]). The test asks whether "each of two projects would have taken place with or without the other."

Specifically, Section 1508.7 defines "cumulative impacts" as: "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

A cumulative impact analysis "must be more than perfunctory: it must provide 'a useful analysis of the cumulative impacts of past, present, and future projects'" (*Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1075 [9<sup>th</sup> Cir. 2002]). To be useful to decision makers and the public, the cumulative impact analysis must include "some quantified or detailed information: . . . general statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided" (*Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 868 [9<sup>th</sup> Cir. 2005]). The Corps must include a "hard look" at the significant connected and cumulative impacts to Montana that the GPT/BNSF Custer Spur proposal presents.

In July 2012, the Western Organization of Resource Councils (WORC) released a report titled, *Heavy Traffic Ahead* (see <http://www.heavytrafficahead.org/>). The report was prepared by Terry Whiteside (a consultant in transportation and marketing who is a former head of the Transportation Division of the Montana Dept. of Commerce and currently representing most of the Wheat and Barley Commissions throughout the western half of the U.S.), Gerald Fauth, III (a transportation consultant with extensive experience as staff advisor in transportation for the STB and an independent consultant on economic, regulatory, public policy, and legislative issues primarily associated with or related to the U.S. railroad industry), and attorney Richard Streeter (who has experience in transportation law representing regulated and unregulated carriers as well as shippers, landowners, local communities, and state and local governmental agencies before the U.S. Department of Transportation and its multiple administrations, including the Surface Transportation Board and its predecessor, the Interstate Commerce Commission). Key findings in the report are:

- U.S. coal export markets are headed for explosive growth. Coal export between the PRB and Pacific Northwest export terminals in Oregon, Washington, and British Columbia are projected at 75 million tons per year by 2017 and climbing to 170 million tons per year by 2022.
- While this coal export commerce would generate billions of dollars in annual revenues for railroad, coal, and port terminal companies, state and local governments would bear the brunt and burden of most of the related infrastructure costs in their localities and would likely be required to spend hundreds of millions of dollars in related mitigation, litigation, debt, and other costs associated with the necessary improvements to accommodate export coal traffic levels.
- The west-bound movement of coal is likely to disrupt the frequency and reliability of inbound and outbound shipments of containerized traffic and that traffic would likely experience diversion to California and Canadian ports.
- Export grain railroad traffic would be adversely impacted by the reduction of rail capacity and would likely experience deterioration of rail service, such as higher transit and cycle times, and would likely incur higher costs in the form of higher freight rates and equipment costs.
- Many areas along the routes would require major upgrading and expansion of existing tracks and related infrastructure, which could cost billions of dollars.
- While BNSF, Union Pacific (UP), and other railroads will be involved in the PRB to Pacific Northwest coal export transportation market, to some extent BNSF's routes are significantly shorter than the UP routes, and BNSF has a lower cost structure, thus, it will likely capture the lion's share of traffic and dominate the export market.
- The expected large coal volumes will result in several major choke points and bottlenecks and will likely cause rail congestion problems for the entire route, affecting Amtrak passenger service as well as other shippers.

The impacts to Montanans and Montana communities from increased coal train traffic are real and significant – and these impacts will go far beyond “inconveniences.” The GPT/BNSF Custer Spur expansion project at Cherry Point is only one part (albeit a major part) of an overall plan by coal and rail corporations. As noted above and based on PRB coal company projections, coal export will amount to at least 75 million tons of coal and as much as 170 million tons each year through Montana.

Coal trains (today) are 120–125 cars long, and each car holds 115 tons of coal. By extrapolation, that means that Montana will likely see at least 30 more coal trains each day (15 loaded going west and 15 empty returning to the coal fields) – in addition to all the train traffic we currently experience. And, if all

the West Coast ports are built or expanded and the high-end coal company projections are met, Montana could potentially experience as many as 64 more coal trains (total east and west) each day.

There will be health, safety, quality of life, as well as actual financial costs to Montana citizens and communities from this increase in coal train traffic. Billings, Montana – just like Spokane, Washington – will be most affected by this increase in the number of coal trains as it is a bottleneck for rail traffic. All outgoing coal trains from the PRB headed for Pacific Northwest ports pass through Billings.

The increased number of trains in Montana will mean more noise, a greater potential that emergency responders will be delayed in reaching residents when there is a medical emergency (or a fire or the need for police), and a greater potential for vehicle collisions with trains and for pedestrian accidents.

More trains in Montana will mean an increase in the amount of airborne pollutants (particulate matter) from diesel engines as well as from coal dust. Medical studies have shown a clear link between both diesel air pollutants and coal dust and disease. Additionally, more trains will mean more vehicles idling at train crossings when trains are passing – and adding their exhaust (containing particulate matter and other pollutants) into the air. While those with chronic disease, the elderly, young children, and pregnant women are most at risk, the health effects from particulate matter exposure may occur years later, so even healthy individuals need to be concerned.

As an industry, coal is a significant contributor to public health problems, and the GPT will serve to increase those problems by increasing the mining, transporting, and burning of coal. The National Academy of Sciences estimated in 2009 that 20,000 Americans die prematurely due to fossil fuels, and coal, by far, is the primary source of carbon emissions among the fossil fuels. It should be noted that the Academy only studied premature deaths and did not look at other non-lethal health problems cited by other studies.

A Harvard Medical School study published in 2011 cited health problems attributable to coal, such as:

- low birth weight and developmental delays (both of which can lead to more ailments in adulthood)
- stunted lung development
- kidney disease
- cardiovascular disease
- stroke
- heart disease
- lung cancer
- bronchitis
- chronic obstructive pulmonary disease (COPD)

As more coal is burned, these health problems will increase. The GPT as well as the other proposed West Coast coal export terminals will directly lead to an increase in the burning of coal, and the link between increased coal burning and associated public health problems cannot be ignored and should be included and analyzed in the EIS.

We often don't think of noise as a health issue beyond the obvious link of loud noise exposure to hearing impairment and deafness, but the medical literature also links noise to other significant human health issues, including, for example, increased blood pressure, arrhythmia, and stroke; sleep disturbance and resultant fatigue; cognitive impairment in children; and exacerbation of mental health disorders. More trains will mean more noise, especially noise from the sound of train horns that Federal law requires train engines to blow when approaching a crossing whether that crossing has guard arms that come down or

not. There is a process that communities can go through to establish “Quiet Zones” in order to eliminate the sound of train horns. But, the citizens of any Montana community wanting a Quiet Zone generally will have to pay for the infrastructure upgrades required that allow trains to not blow their horns.

It is true that if a rail company needs to upgrade its track, a bridge, or a crossing in order to facilitate current or increased train traffic, they will do so and they will pay for it. However, if a Montana city or county wants to have a particular crossing in their community upgraded to deal with local impacts and the rail company does not need to do this in order to facilitate increased train traffic, under existing law the railroads do not have to respond to these local government concerns. The only choice Montana citizens have at that point is to pay for any upgrade with public money – taxes from somewhere be it federal, state, county, or municipality taxes.

Consequently, the increased coal train traffic from the PRB mines all the way to the GPT as well as the other proposed West Coast coal export terminals will directly lead to increased financial costs to Montana communities and taxpayers. These financial costs cannot be ignored and should be included and analyzed in the EIS.

The effects of coal export extend far beyond the West Coast export terminals and will result in system-wide impacts throughout the rail transportation system of the region extending back to southeast Montana and northeast Wyoming. The report, *Heavy Traffic Ahead*, cited above, details many of these impacts. As an organization that advocates for family-based agriculture, Northern Plains is especially concerned about the effects of increased coal train traffic on grain shipments, a significant Montana agricultural commodity. This issue should be included and analyzed in the EIS.

Because the primary (or sole) reason for the GPT as well as the other proposed West Coast coal export terminals is to ship PRB coal to Asian markets, these terminal projects will lead to a significant increase in coal mining in the PRB. Thus, increased coal mining is a connected and cumulative impact of the GPT and the other proposed West Coast coal export terminals, and these impacts should be included and analyzed in the EIS. The proposed Otter Creek coal mine in southeastern Montana is just one example of this issue, and a brief review of that proposal highlights our concern.

Today, the Otter Creek area is a rural agricultural valley. This area currently has clear air, clean water, native grasslands, valuable fish and wildlife habitat, quiet communities, productive multi-generation ranches, and abundant recreational opportunities. In March 2010, St. Louis-based Arch Coal, Inc. was the successful bidder for a state coal lease of the Otter Creek Tracts.

Otter Creek coal is destined for the export market. Arch Coal has made several representations to investors and others that the Asian export markets would be the primary market for the Otter Creek coal via proposed new coal export terminals in the Pacific Northwest, in particular the proposed export terminal at Longview, Washington, in which Arch Coal has a 38% interest. That terminal, just like the GPT at Cherry Point, is serviced by BNSF.

If fully developed Otter Creek would become one of the largest new coal strip mines in North America. The new coal strip mine would fundamentally change the character and quality of life in this area. The destruction of the land – often productive agricultural land – when a massive strip mine is dug is obvious. Wildlife habitat far beyond the mine’s perimeter is impacted; vegetation and wildlife species of all kinds are affected. Areas of cultural importance are affected. Air quality is affected as active blasting releases poisonous nitrogen dioxide and dust (including coal dust) into the air and dredging releases more dust. Coal seams are filled with water that are critical in this arid region. These irreplaceable aquifers supply naturally flowing springs as well as stock-watering wells that pump from the aquifer. Strip mining severs these aquifers, drying up the springs and wells. Surface waters are often contaminated with runoff

pollution. These and other impacts from increased coal mining will be the direct result of a coal export program that the GPT/BNSF Custer Spur expansion project as well as other West Coast port expansion proposals promotes.

Additionally, the only way to transport Otter Creek coal to West Coast port terminals for export is to build the Tongue River Railroad (TRR). The one and only purpose of building the TRR is to haul Otter Creek coal. This railroad would destroy additional productive agricultural lands, bisect and devalue ranches, and industrialize the region.

Finally, because the sole purpose of the GPT/BNSF Custer Spur expansion project is to facilitate the shipment of coal being transported from the PRB to its final destination in Asia – particularly China – where it will be burned for energy, we also believe that **the Corps must give full consideration to the long-term indirect effects that this federal action will have on global climate. The burning of coal is a connected and cumulative impact of the GPT/BNSF Custer Spur projects.** Although all fossil fuels contribute to climate change, coal's contribution is by far the most significant. The export of our nation's coal resources to China and other Asian nations where it will be burned – often in plants where there are few, if any, air pollution controls in place – will result in significant consequences for Montanans and all Americans.

When Congress passed NEPA in 1969, one of its authors, Washington's Senator Henry Jackson, described the Act this way: “[NEPA] provides a statutory foundation to which administrators may refer . . . for guidance in making decisions which find environmental values in conflict with other values. . . . [NEPA] is a Congressional declaration that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind [and] that we will not intentionally initiate actions which will do irreparable damage to the air, land, and water which support life on earth. . . .”

NEPA requires that federal agencies consider “any adverse environmental effects” of their major actions (42U.S.C. §4332(C)). The CEQ regulations implementing NEPA explain that “effects” include both direct and indirect effects. Indirect effects are defined as those that “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable” (40 C.F.R. §1508.8). The Eight Circuit in *Mid-States Coalition for Progress v. STB* held that the STB could not approve the building of a rail line without first examining the effects that may occur as a result of the reasonably foreseeable increase in coal consumption; stating that “degradation in air quality is indeed something that must be considered in an EIS if it is “reasonably foreseeable” (345 F.3d 520, 549 [2003]). Additionally, the Court explained that while the extent of the degradation in air quality may be speculative, the nature of the effect would not be and, thus, must be addressed in the EIS.

It is now well-established in the scientific community that the burning of coal and other fossil fuels is putting us on a dangerous path toward irreversible climate change. According to the *U.S. Global Change Research Report* (2009), “The global warming observed over the past 50 years is due primarily to human-induced emissions of heat-trapping gases. These emissions come from the burning of fossil fuels (coal, oil, and gas), with additional contributions from the clearing of forests and agricultural activities.”

There have been a series of legal and policy developments in the past decade relating to the regulation of greenhouse gas (GHG) emissions and assessment of federal actions that may affect climate change. For example:

- The Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007) acknowledged the emerging scientific consensus on the dangers posed by climate change and holding that CO<sub>2</sub> and other GHG are “air pollutants” under the Clean Air Act subject to EPA's [Environmental

Protection Agency] regulatory authority. The Court directed EPA to “decide whether greenhouse gases cause or contribute to climate change” and thereby endanger public health or welfare, which the agency did in 2009. The EPA concluded that “greenhouse gases in the atmosphere endanger the public health and welfare of current and future generations.” *See* 74 Fed. Reg. 66,495, 66,496 (Dec. 15, 2009).

- The United States Global Research Program Report, *Global Climate Change Impacts in the United States*, documents the impacts of global climate change, including the increased likelihood of more frequent and more intense heat waves, more wildfires, degraded air quality, more heavy downpours and flooding, increased drought, greater sea level rise, more intense storms, harm to water resources, harm to agriculture, harm to wildlife and ecosystems, and ocean acidification.
- EPA adopted the nation’s first carbon emission regulation establishing fuel-economy standards for mobile sources, starting with cars and light trucks.
- EPA adopted the “Tailoring Rule,” subjecting stationary sources such as coal-fired power plants to regulation of GHG emissions if they emit GHG emissions of at least 100,000 tons per year even if they do not exceed the permitting thresholds for any other pollutant.
- In 2010, the National Academy of Sciences published a report, *America’s Climate Choice*, that details the impacts already underway in the US, as well as policies and actions that are necessary to mitigate and adapt to climate change, including the use of existing agency authorities to reduce reliance on fossil fuels.

In February 2010, CEQ published *Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions*. The guidance document “advises Federal agencies to consider, in scoping their NEPA analyses, whether analysis of the direct and indirect GHG emissions from their proposed actions may provide meaningful information to decision makers and the public.” When the U.S. State Department drafted its EIS for the Keystone XL Pipeline, it carefully followed the CEQ guidelines and analyzed both the direct and indirect impacts of GHG emissions of the proposed pipeline (Final EIS Keystone XL Project 3.14.3.14). The Corps should follow the example set by its counterpart agency and similarly follow the CEQ guidelines advising consideration of both direct and indirect increases in GHG emissions.

We believe that the GPT port expansion project directly and indirectly contributes to significantly increased GHG emissions as this port will be integrally tied to the increased burning of coal, the product being exported. In *Border Power Plant Working Group v. Department of Energy*, the Court determined that emissions resulting from the operation of a turbine were “effects” of the transmission line that would transport the energy and, therefore, must be analyzed under NEPA (260 F.Supp.2d 997, 1017 [S.D. Cal. 2003]). Similarly, emissions from the burning of the coal that would be transported to the GPT at Cherry Point for export to Asia are an “effect” that the Corps must consider in drafting the EIS.

Virtually every ecological community and natural system in Montana is already being impacted by global climate change. These impacts will continue to become more and more severe unless the use of coal is dramatically curtailed and all nations make a concerted effort to develop other forms of energy. Wherever the PRB coal being transported is burned, the GHG emissions will eventually impact Montanans.

Within the last century, Montana has seen a 1.3°F increase in its average temperature (*Climate Change and Montana*, EPA, 1997). The Intergovernmental Panel on Climate Change has projected that, within the 21<sup>st</sup> century, temperatures will increase 4°F in the spring and summer months and 5°F in fall and winter. The increase in temperatures are:

- leading to a loss of snowpack through earlier snowmelt with resulting effects on the water supply available for humans, livestock, crops, fish, and wildlife. Snowpack in Montana holds about 75

percent of the State's water supply. Less snowfall and earlier snowmelt affects aquifer recharge, stream flow, and stream temperature. Early snowmelt also produces an increase in stream flow in winter and spring but a reduction in summer and fall flows. This is detrimental because the summer and fall flows are critical for irrigation, power generation, fishery protection, recreation, and other uses.

- leading to extreme heat waves. In general, heat waves are already occurring at a more frequent rate, thereby increasing mortality and morbidity. EPA studies indicate that Montana is particularly susceptible to more heat waves since it already has irregular, intense heat waves as part of its weather pattern. Heat waves produce a variety of problems, including increased fatalities among the elderly and other vulnerable populations. They also increase the spread of pests and invasive species. In reference to pests, EPA has reported that mosquito populations having the potential to carry encephalitis already exist in Montana. As conditions become warmer, the habitat for disease-spreading insects and pathogens will likely expand and create a greater risk of infection for Montanans.
- increasing the danger of wildfires. Wildfires are already becoming more prevalent and destructive in Montana, especially during summer months. During the period from 2000 through 2007, three National Forests in Montana experienced a loss of over 1,420,000 acres of land due to wildfires. Moreover, in fiscal year 2008 alone, Montana spent \$84.3 million on fire and damage control. These costs to the State will only increase as global warming escalates. Wildfires also release huge quantities of CO<sub>2</sub> thereby creating a feedback loop that drives global warming ever higher.

Climate change is expected to have significant impacts on water supplies and the productive capacity of agricultural lands. In many parts of Montana, 2012 was the hottest and driest year on record. In Montana, agriculture is the state's largest industry and comprises 64% of the state's land area. In Montana, the most noticeable signals for climate change include an earlier snow melt, an earlier start to the spring growing season, a more pronounced mid-summer drought period, and more dangerous and destructive wildfire seasons.

According to Dr. Steven Running, a University of Montana climate scientist, 30 years ago snow melts occurred around the beginning of April. In recent years, they have occurred in mid-March. It is conceivable that in 30 years snow melts will occur in late February if this trend continues. The growing season currently begins a month earlier than it did 30 years ago, and summers are longer, hotter, and drier with lower river flows and more wildfires.

### Conclusion

Northern Plains believe that the Corps must give full consideration to the long-term direct and indirect effects that the extraction, transport, export shipment, and final combustion of PRB coal – the sole reason for the project – presents as connected and cumulative impacts of the GPT/BNSF Custer Spur port expansion projects.

If we honestly calculated the true costs of coal to the land, to our health, and to our planet, coal would not be cheap. But the significant costs of coal are shifted into the future and onto others, thus, giving coal the illusion of being cheap.

Northern Plains opposes the proposed GPT/BNSF Custer Spur expansion projects. **The connected and cumulative impacts to Montana from the proposed GPT/BNSF Custer Spur expansion projects are real and significant. The EIS being prepared by the Corps and its partners for this project must include an analysis of the connected and cumulative impacts it will have on Montana.**

These comments are submitted with the hope that the EIS prepared by the Corps and its partners will bring substantive and meaningful information together about these connected and cumulative impacts so that a fully informed decision on this project can be made. Indeed, that is our expectation.

Sincerely,

A handwritten signature in cursive script that reads "Walter Archer".

Walter Archer, Chair  
Northern Plains Resource Council

Northern Plains Resource Council held two hearings for Montana citizens to submit public scoping comments on the proposed Gateway Pacific Terminal. We had one in Bozeman on November 20 and one in Missoula on November 28. Many citizens came out and gave oral testimony. Attached are their transcribed comments.