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**Public Comments in Response to September 21, 2012 Federal Register Notice of Intent to Prepare a Joint Environmental Impact Statement: Gateway Pacific Terminal Project and Custer Spur Project**

Dear Co-Lead Agency Representatives:

This letter offers the public scoping comments of Peabody Energy Corporation (“Peabody”) in response to the invitation of the U.S. Army Corps of Engineers (“USACE”), the Washington Department of Ecology, and Whatcom County, in their capacity as Co-Lead Agencies responsible for completion of the Joint Environmental Impact Statement (“EIS”) for the proposed construction and operation of the Gateway Pacific Terminal (“GPT” or the “Terminal”) and the associated upgrades to BNSF Railway’s (“BNSF”) Custer Spur, as set forth in the September 21, 2012 Notice of Intent to commence EIS scoping. *See* 77 Fed. Reg. 58531. These comments refer mainly to the construction and operation of GPT (the “GPT project”), but Peabody is fully supportive of both the GPT and BNSF proposals (collectively, the “Projects”).

As a potential customer of GPT, Peabody supports a comprehensive and robust review of the potential environmental and socio-economic impacts associated with the construction and operation of the Terminal as mandated by the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, (“NEPA”) and the Washington State Environmental Policy Act, WASH. REV. CODE § 43.21C, (“SEPA”). Peabody likewise appreciates the opportunity to provide comments during the EIS scoping period to assist the Co-Lead Agencies in fulfilling the purposes underlying scoping, namely, to identify and focus the EIS process on a thorough examination of the significant potential environmental effects associated with the proposed GPT project.

## **I. U.S. Export Policy and the GPT Opportunity**

In his 2010 State of the Union address, President Obama called for the doubling of U.S. exports by 2015 – a move that the Administration expects will create two million new jobs for the American people. The President’s pledge acknowledged both the urgency of the opportunity and the consequences of failing to seize it. “We have to seek new markets aggressively, just as our competitors are. If America sits on the sidelines while other nations sign trade deals, we will lose the chance to create jobs on our shores.”<sup>1</sup> To meet this challenge, the Administration has developed its National Export Initiative, which aims to ensure that “U.S. businesses can actively participate in international markets.” Identifying new export opportunities with expanding economies in Asia and across the globe is the clear mandate and focus of this Initiative:

95% of the world’s customers lie outside the United States; we ignore them at our peril. Tapping into customers in fast-growing markets abroad and in our traditional markets is crucial to putting the United States’ own economy on a solid footing - and generating the demand needed to put Americans back to work.<sup>2</sup>

Peabody enthusiastically supports the GPT project. The development of the Terminal is perfectly aligned with the President’s export goals and his National Export Initiative. GPT will provide an outlet for some of the United States’ most strategic exports, including clean, low sulfur coal from the United States’ vast Western coal reserves destined for Asia’s burgeoning markets. The Terminal’s unique deep water shoreline port access – perhaps the last such dedicated site on the West Coast – will likewise ensure the necessary capacity and scale to support a robust export operation for years to come.

GPT will boost dramatically the economic prospects of U.S. commodity markets and the competitiveness of U.S. businesses. Local economic impacts will also be considerable. The construction and operation of GPT is expected to create 4,400 construction jobs and 1,250 high-paying, permanent jobs in Washington State alone and generate \$140 million annually in economic benefits to the local economy.

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<sup>1</sup> President Barack Obama, *State of the Union*, 2010.

<sup>2</sup> NEI Report, September 2010.

## II. The Need for a Properly Scoped EIS to Capitalize on the GPT Export Opportunity

To comply with NEPA/SEPA mandates and respond effectively to export market demands and opportunities, the EIS process for GPT must be singularly focused on an examination of reasonably foreseeable and truly meaningful potential environmental impacts associated with the Terminal. Potential impacts that rely on speculation, endless assumptions and intervening causes and effects well beyond the boundaries of the Terminal site, and beyond the ability of the Co-Lead Agencies to regulate and control, serve only to distort the decision-making process and are not the proper subject of the EIS. Properly conceived and implemented, the EIS must be concise, efficient and timely completed.

The project applicants have advised the Co-Lead Agencies regarding the scope of potential environmental impacts that the applicants believe should be assessed in the GPT EIS. This scope includes direct impacts from Terminal operations, such as wetlands disturbances, air emissions, and water discharges from Terminal operations. Indirect and cumulative impacts that have a clear causal relationship to the Terminal operations, including marine resource impacts near the GPT wharf and trestle and vessel traffic concerns in Puget Sound, must also be carefully evaluated in the GPT EIS. Peabody agrees with the project applicants and believes that this proposed EIS scope represents the limits of any logical and commercially sensible application of NEPA to the GPT project.

Predictably, opponents of the GPT project have argued in their orchestrated and repetitive comments at the EIS scoping meetings that a tailored EIS review consistent with the scope advanced by the GPT project applicants is insufficiently narrow. These opponents have suggested instead that, because coal is expected to be exported through GPT, the EIS must evaluate not only Terminal-related impacts, but all potential environmental effects going back to the mining of coal in the western United States and must carry that review of environmental impacts forward to the transportation of mined coal to GPT, the shipment of coal from GPT to Asian buyers and other global consumers, and, ultimately, the consumption of that coal in foreign markets.

The GPT project opponents' suggested "life-cycle" environmental review as part of the EIS is impractical and inappropriate and simply cannot be entertained by the Co-Lead Agencies. The United States exports over a trillion dollars worth of commodities from port terminals across the country every year. The breadth of these exports are staggering and include the production and use of a multitude of commodities with wide-ranging potential environmental consequences, including emissions of greenhouse gases ("GHGs"). For example, over 3 million barrels of petroleum products are exported from U.S. ports every single day.<sup>3</sup> The CO<sub>2</sub> content of these petroleum product exports is equivalent to that of 300 million tons of PRB coal per year, six times larger than the *maximum* coal export capacity of the GPT project. The value of petroleum product exports in 2011 exceeded \$100 billion.<sup>4</sup> Exports of petroleum products exceeded imports in 2011 for the first time in six decades due to energy markets becoming more globally integrated.<sup>5</sup> In the same way the thermal coal market is growing rapidly and becoming globally integrated. These vibrant export

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<sup>3</sup> EIA, U.S. Petroleum Exports Data (Oct. 2012).

<sup>4</sup> U.S. Census Bureau, U.S. Bureau of Economic Analysis, February 10, 2012.

<sup>5</sup> Presentation, Adam Sieminski, EIA Administrator, Morgan Stanley Global Commodities Conference, December 12, 2012.

markets could not function if NEPA was interpreted to require expansive life-cycle environmental reviews for all of the chemicals, petroleum and other highly valuable and strategic commodities and products that are manufactured in the United States and sold around the world today.

Likewise, the Obama Administration has no chance of fulfilling the promise of its National Export Initiative and maintaining the competitiveness of the United States in complex and rapidly evolving global markets if NEPA is interpreted to require life-cycle environmental reviews before new export opportunities can be pursued. The President recognized this critical reality in issuing his Presidential Memorandum in August of 2011, calling for agencies to “take steps to expedite permitting and review” of important infrastructure projects “to ensure that the United States has fast, reliable ways to move people, goods, energy, and information.”<sup>6</sup> The Council on Environmental Quality (“CEQ”), the Agency responsible for implementing NEPA, has also recently developed new guidance to improve the process for efficient and timely EIS reviews, which affirms the basic principle that “NEPA encourages straight forward and concise reviews and documentation that are proportionate to potential impacts and effectively convey the relevant consideration in a timely manner to the public and decision makers, while rigorously addressing the issues presented.”<sup>7</sup>

Finally, as explained more fully below, the overly expansive EIS reviews being requested by opponents of the GPT project are directly contrary to decades of NEPA and SEPA law, regulation, and policy. NEPA and SEPA have distinct causal and geographic limits that must be necessarily respected in the EIS process to ensure the timely review of relevant and reasonably foreseeable environmental impacts. Opponents of the project are calling upon the Co-Lead Agencies to assess how, where and when coal mining will occur in the United States and how, where, when and who will ultimately consume any coal exported through GPT. Such a review is an exercise in pure speculation and is otherwise incapable of yielding any useful or relevant information on potential environmental effects that can be managed and mitigated by the Co-Lead Agencies. The review of direct, indirect and cumulative impacts advanced by the project applicants, however, by contrast, is designed to ensure that, once in operation, potential environmental impacts associated with the operation of this strategic export terminal will be effectively managed and mitigated.

### **III. The Business and Mission of Peabody Energy Corporation**

Low sulfur Western coal planned for export through GPT and other existing and proposed port terminals in the United States and Canada is vital to the continued advancement of societies around the world. Peabody strongly believes that access to affordable energy is a basic human right and the Company is committed to providing clean coal technologies and solutions to meet this rapidly rising global need. Coal shipped through U.S. ports will help reduce energy poverty in Asia, where hundreds of millions of citizens are gaining energy access through coal-fired power for the first time. Peabody coal expected to be exported from GPT will also be far cleaner than many fuel alternatives in Asia and will be used at some of the most advanced power plants in the world.

Countries across Asia, including China, India, South Korea and others, will continue to identify suppliers of coal to satisfy their growing needs. These markets are clearly better served by market-

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<sup>6</sup> Presidential Memorandum, Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review, August 31, 2011 (“2011 Presidential Memorandum”).

<sup>7</sup> CEQ, Memorandum for Department Heads, Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act (March 2012)(“2012 CEQ Memorandum”).

leading, technology-driven companies, such as Peabody, who are committed to responding to these needs with high quality reserves and a commitment to environmental leadership and sustainable and responsible operating excellence.

### **A. Scope of Peabody Operations**

Peabody is the world's largest private-sector coal company and a global leader in clean coal solutions. With a 130-year history, Peabody produces thermal coal for electricity and metallurgical coal for steelmaking and serves customers in more than two dozen nations on six continents. The company has trading and business offices in the United States, the United Kingdom, Australia, China, Indonesia, Germany and India.

Peabody operates 27 mines in the United States and Australia and has an outstanding track record for safety, operational excellence, environmental stewardship and corporate and social responsibility. The company's large-scale surface mines account for approximately 90 percent of the company's sales volumes. Safety is a core value and essential to Peabody's mission.

Active in communities where it operates, Peabody is focused on improving lives through social investments that empower communities, educate the next generation, restore, conserve and beautify the environment, and engage its 8,500 employees to give back. Peabody operations annually inject more than \$19 billion in direct and implied global economic benefits around the world.

A Fortune 500 company, Peabody is featured in the 2011 Forbes Global 2000 ranking of the world's leading public companies and was honored with a 2012 Platts Global Energy Award for leading the global coal sector in safety, operational, marketing and environmental achievements, corporate citizenship and financial success. Peabody earned more than 30 major awards for safety, financial and business leadership, environmental excellence and corporate responsibility in 2012 alone.

### **B. Global Demand for Energy**

Rapid industrialization, modernization and urbanization are driving sustained long-term global energy growth as nations like China, India and the developing world lift billions to a better quality of life. The world is witnessing the creation of a new middle class, as U.S.-sized populations migrate to urban centers and citizens embrace digital lifestyles with modern conveniences like air conditioning, automobiles and electronics. All of these goods require steel to make and power to run.

Enormous growth comes at a time when nearly 3.6 billion people – about half the world's population – lack proper energy to reach the upper levels of the United Nations Human Development Index.<sup>8</sup> Another 2 billion people will require energy in two decades based on forecasted population growth,<sup>9</sup> putting the world on course to have 5 billion to 6 billion people requiring new sources of electricity in as little as 20 years.

Low-cost energy is the foundation for a sustainable future, and coal is the fuel with the scale to meet these needs. The world has hundreds of billions of tons of coal that make up 60 percent of our

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<sup>8</sup> International Energy Agency ("IEA"), World Energy Outlook 2011; The World Bank World Development Indicators (2011).

<sup>9</sup> The World Clock.

global energy resources. Coal is found on every major continent and offers a 135-year global energy supply.<sup>10</sup>

Coal has been the world's fastest-growing fuel for the past decade and is forecast to grow 65 percent by 2035, surpassing oil as the world's largest energy resource.<sup>11</sup> Asia alone represents more than 4 billion tons of coal demand growth in the next quarter century. Regardless of whether GPT is built, these nations will continue to use more coal. GPT offers the United States an opportunity to create jobs and economic growth with a world-class U.S. workforce, employing the highest level of safety and environmental standards, while using some of the best quality coal in the United States.

### **C. Peabody's Contributions to Next Generation Coal Fueled Power**

21st Century coal symbolizes the future of coal in the world. Essential to this future is continued advancement of near-zero emissions technology. Peabody has developed a series of technology-based solutions to alleviate energy inequality by 2050 and progress society's important goals of energy security, economic growth and environmental solutions through greater use of coal.

The next generation coal-fueled power plant will be virtually free of emissions, using advanced technologies to minimize emissions and capture carbon dioxide. Peabody is a global leader in advancing near-zero emissions and is the only non-Chinese equity partner in the GreenGen power plant and carbon research center in Tianjin, China. GreenGen commissioned its first 250 megawatt integrated gasification combined cycle ("IGCC") unit in 2012, representing China's first IGCC unit with ultra low emissions. Operator Huaneng Group calls GreenGen China's most "environmentally friendly" coal power plant with emissions that are approximately 10 percent of a conventional coal-fueled power plant. Sulfur removal is as high as 99 percent and nitrogen oxide emissions are as low as 15 to 20 percent of a conventional power station. In addition to GreenGen, Peabody is pursuing projects and partnerships to advance near-zero emissions and low carbon projects in the United States, China and Australia.

From a practical standpoint, Peabody believes that the first step in realizing meaningfully lower carbon dioxide emissions is the replacement of traditional coal plants with more efficient, or 'supercritical,' coal-fueled generation. An example of this technology can be found at the Prairie State Energy Campus, an advanced power station commissioned in 2012 in Southern Illinois. This project has generated thousands of high-paying construction jobs, provides low cost electricity to 2.5 million families daily, and will have a \$22 billion economic impact over the next 30 years.

Supercritical and ultra super-critical coal plants emit one-fifth the criteria pollutant emissions of traditional coal plants and have a carbon dioxide emissions profile that is as much as 30 percent lower than the oldest existing plants. Greater deployment of advanced technologies in the United States drives major environmental improvement and offers a global model – U.S. coal use has nearly doubled since 1970 as emissions per megawatt hour have been significantly reduced during that period.<sup>12</sup>

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<sup>10</sup> BP Statistical Review of World Energy 2011.

<sup>11</sup> IEA, Current Policies Scenario, World Energy Outlook 2011.

<sup>12</sup> EIA, Annual Energy Review 2011; U.S. Environmental Protection Agency ("EPA"), National Air Pollutant Emission Trends, 1970-2011 (Fuel Combustion Electric Utilities).

Peabody will ship high quality, low sulfur coal through GPT, which also will help improve emissions levels across Asia where the world's most efficient coal fueled power plants are being brought on-line to respond to continued high rates of growth in energy demand.

#### **IV. The Purpose and Limits of EIS Scoping**

As the Co-Lead Agencies for the Projects have advised, the purpose of the EIS scoping process is to elicit comments from the interested public on the potential environmental effects associated with the Projects. Courts have clearly stated that the EIS process may not be used as a forum for engaging in a political debate on the merits of a project. *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 777 (1983). This is consistent with the Co-Lead Agencies admonition in its EIS scoping process guidance that “comments about the merits (pro or con) of the proposal ... will not be considered in determination of the scope of the EIS.”<sup>13</sup> Rather, the process is intended to highlight those significant issues that will require in-depth analysis in the EIS. 40 C.F.R. § 1501.7. Ultimately, an EIS “must concentrate on issues that are truly significant to the action in question, rather than amassing needless detail.” 40 C.F.R. § 1500.1(b).

While NEPA regulations require an assessment of direct, indirect and cumulative impacts, the EIS is properly limited to examining those impacts that are both significant and reasonably foreseeable. As defined by the courts, “reasonable foreseeability” does not include “highly speculative harms” that might “distort the decision-making process” or otherwise make it unwieldy or incapable of being completed in a reasonable time and through the effective use of available resources. *Robertson v. Methow Valley Citizens Council*, 109 S.Ct. 1835, 1849 (1989). The EIS scoping process is also designed to identify those environmental issues that have been analyzed before and therefore require no additional consideration in an EIS. 40 C.F.R. § 1501.7(a)(3). Ultimately, the EIS scoping process should aid the lead agencies in narrowing the issues for consideration in the EIS.

The prevailing view of the project opponents regarding the required scope of the EIS review for the GPT project stands in stark contrast to the NEPA/SEPA regulatory mandate outlined above. In addition to their efforts to turn the EIS scoping meetings into political rallies, GPT project opponents continue to advocate for a seemingly limitless EIS environmental review for this project, arguing for their “life-cycle” environmental analysis of coal or, alternatively, a programmatic review of all proposed export terminal projects in the western United States. In their articulation of these positions on scoping, the real objective of the GPT project opponents is exposed — to create a lengthy, cumbersome, and unwieldy EIS process unlikely to result in any meaningful conclusions on real and discernible project impacts in any rational time frame so as to prevent the project from advancing through permitting to construction. As suggested previously and outlined more fully below, this strategy ignores the reality of robust U.S. export markets, is directly at odds with the Obama Administration's stated export goals and its National Export Initiative, and contrary to established NEPA/SEPA law and policy.

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<sup>13</sup> See Co-Lead Agencies, “Guide to participating in NEPA and SEPA scoping and upcoming scoping meetings” (December 2012).

## **V. Scope of the Required EIS Review at GPT**

### **A. NEPA/SEPA requires a review of Direct, Indirect and Cumulative Impacts**

Peabody supports the Co-Lead Agencies' full and complete analysis of the potential direct, indirect and cumulative environmental effects associated with the Projects. Peabody has reviewed and agrees generally with the comments of Pacific International Terminals, Inc. ("PIT") and BNSF, on the identification of potential environmental effects to be examined in the EIS process.

As a potential customer of the proposed Terminal, Peabody agrees that the Co-Lead Agencies should analyze the potential impacts of particulate emissions from coal-handling equipment operating at the Terminal and the effectiveness of proposed control technologies and operating practices designed to effectively minimize and prevent harm to human health and the environment. As designed, the Terminal proposes to employ state-of-the-art materials handling equipment and related control devices, including covered and enclosed conveyors, dust suppression systems, and indoor unloading stations, to ensure adequate control of particulate emissions during coal handling and unloading operations and coal storage and management activities at the Terminal. The Terminal has also been designed with appropriate process wastewater and stormwater controls necessary to meet applicable effluent discharge standards. Best management practices, such as the use of sealants on shipped coal, will likewise be implemented to further manage dust during commodity deliveries at the Terminal.

Peabody notes that certain public commenters have suggested that the composition of any coal sealants used on coal managed at GPT should be evaluated in the EIS to ensure the absence of impacts associated with any coal stored and handled at the Terminal. Peabody concurs with these comments and the appropriateness of a review of potential related impacts from sealants used on coal stored at the Terminal during the EIS process. Peabody intends to treat all coal it exports through GPT with sealants, consistent with BNSF requirements. The coal sealants being used are water-based products and are not expected to pose any risk of adverse impacts to human health and the environment. Safety and constituent data on the primary coal sealants proposed for use is publicly available and Peabody can provide the Co-Lead Agencies with additional information on these products as needed. Peabody will also use best practices to load coal trains, including proper coal sizing and load profiling to further minimize dust emissions.

### **B. Life Cycle Analyses of U.S. Coal Production and Asian Coal Consumption are not Within the Scope of the GPT EIS**

In contrast with the focused analysis described in the PIT and BNSF comments, the scope of the EIS requested by GPT project opponents is impractical and inappropriate. The EIS scope requested by project opponents with respect to coal alone would take years to complete and would require the Co-Lead Agencies to (i) retread environmental reviews undertaken for previous federal actions concerning coal mining in the U.S.; (ii) speculate about future energy development and policy in the United States; and (iii) model future development of global seaborne coal markets, coal generation technology advancements, and energy consumption trends in Asia and elsewhere around the world.

Moreover, while coal is currently anticipated to be the largest volume commodity to be shipped through GPT, it is but one of many possible commodities that might pass through GPT over the life

of the Terminal. The commodity mix at the Terminal can and will change over time. Under the project opponents’ analysis, a life cycle review should presumably be conducted for all potential commodities (or the combination thereof) to be managed at GPT, including:

Alumina	Barley	Petroleum Coke
Lime Rock	Corn	Calcined Petroleum Coke
Phosphate Rock	Feed pellets/meal	Sand
Potash	Soybeans	Gravel
Sulfur	Wheat	Wood Chips/Pellets
Salts	Oil Seeds	Ores

Furthermore, under project opponents’ logic, EIS reviews for every infrastructure project related to commodity transportation or distribution — from airports to highways to new rail lines — would need to consider the life cycle impacts of the commodities moving through those facilities. It is inconceivable to understand how U.S. export markets could function if the millions of barrels of crude and refined petroleum destined for foreign countries were subjected to a cradle to grave life-cycle environmental review under NEPA prior to export from U.S. port terminals.

The Obama Administration is acutely aware of these concerns and recently emphasized the need to accelerate the environmental review process for large-scale infrastructure development projects in the United States to ensure our global competitiveness. As referenced previously, CEQ issued guidance earlier this year on performing “efficient and timely environmental reviews” under NEPA. The new CEQ guidance states that federal agencies are encouraged to “concentrate on relevant environmental analysis in their EISs and not to produce an encyclopedia of all applicable information.”<sup>14</sup> In an August 2011 Presidential Memorandum entitled “Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review,” President Obama was more explicit:

To maintain our Nation’s competitive edge, we must ensure that the United States has fast, reliable ways to move people, goods, energy, and information. In a global economy, where businesses are making investment choices between countries, we will compete for the world’s investments based in part on the quality of our infrastructure.... In the current economic climate it is critical that agencies take steps to expedite permitting and review.<sup>15</sup>

Project opponents’ attempts to transform the required NEPA/SEPA review of the GPT project into a political referendum on coal and a multi-year study on global coal markets and the world’s evolving energy policies is precisely the type of logjam that the Administration is increasingly attempting to avoid.

<sup>14</sup> 2012 CEQ Memorandum.

<sup>15</sup> 2011 Presidential Memorandum.

**1. The suggestion of a life-cycle analysis for commodities shipped through GPT is contrary to NEPA/SEPA precedent.**

As noted above, the impacts (whether direct, indirect, or cumulative) to be studied in an EIS are limited to those that are reasonably foreseeable as a result of the subject project. Indeed, the project activity must be a *proximate cause* of the alleged environmental impact. *Metro. Edison Co.*, 460 U.S. at 774. “Some effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation, will nonetheless not fall within [NEPA’s requirement] because the causal chain is too attenuated.” *Id.*

One of the arguments repeated by the GPT project opponents in EIS scoping comments is that potential GHG emissions from the overseas combustion of PRB coal shipped via GPT and the effect of such emissions on global climate change should be among the issues considered as part of the GPT EIS. This position, however, is not supported by NEPA case law.

Recently, the U.S. District Court for the District of Columbia held that environmental group plaintiffs did not have standing under NEPA to challenge a Bureau of Land Management (“BLM”) EIS for PRB coal leases on the basis that the EIS did not consider certain potential climate change impacts from the ultimate combustion of coal mined from the lease tracts. *WildEarth Guardians v. Salazar*, 2012 U.S. Dist. LEXIS 105331 (D.D.C. 2012), *appeal docketed*, No. 12-5300 (DC Cir. Sep. 25, 2012). The court found that the causal link between plaintiff’s alleged injuries and GHG emissions from ultimate combustion of PRB coal was too attenuated. The court stated:

Plaintiffs’ failure to bridge the evidentiary gap between their localized interests and the diffuse and unpredictable effects of GHG emissions is particularly troubling because the relationship between those two things in this case depends on the behavior of countless third parties.... For example, there is evidence that even if the [mine] tracts lay fallow, domestic and international consumers’ consumption behavior would not be materially affected and the national energy portfolio would remain unchanged.

*Id.*, at \*20-\*21.

Numerous courts have offered guidance on the causal link required between an action and potential environmental effects in order to implicate NEPA. These courts have held that effects must be causally linked to the proposed agency action *such that each action cannot exist without the other* in order for NEPA to require a consideration of those effects. *See, e.g., Border Power Plant Working Group v. Dept. of Energy*, 260 F. Supp. 2d 997, 1013-14 (S.D. Cal. 2003) (citing Ninth Circuit precedent in support of the NEPA principle) (an agency is only required to consider impacts if the proposed action and the impacts are “two links of a single chain”). In *Border Power Plant*, the court held that the Department of Energy’s EIS for a U.S. transmission line was not required to address GHG emissions or climate change impacts from a Mexican power plant that was dedicated primarily to the generation of power for the Mexican market rather than the U.S. market. *Id.* at 1017. The transmission line was not a “necessary prerequisite or essential catalyst” to the operation of the Mexican power plant; the “line of causation [was] too attenuated.” *Id.*

The suggestion that the GPT EIS should include a life cycle environmental impacts analysis for coal production in the United States and coal consumption in Asia would require the Co-Lead Agencies to follow not one, but multiple causal chains, all of which can and will proceed independently from

GPT in the event it is not built. To opine on how, where, when and why one isolated and discrete point in a global commodity distribution network will affect global GHG emissions is an impossible task. There is a long chain of assumptions, intervening causes, political decisions (or lack thereof), and other energy and environmental permitting decisions (both foreign and domestic) that stand between permitting the Terminal currently before the Co-Lead Agencies and life cycle GHG emission effects. The link between GPT and these effects is far too attenuated to justify analysis under NEPA of the GPT project opponents' concerns over coal production and combustion.

Finally, the Co-Lead Agencies are not required as part of the EIS process to assess the effects of actions that are beyond their statutory authority (e.g. through in depth study of the U.S. coal market or global trade patterns). “Where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.” *Dept. of Transportation v. Public Citizen*, 541 U.S. 752, 770 (2004) (finding that DOT did not need to consider the environmental effects arising from the entry of Mexican motor carriers into the U.S. in proposing safety regulations for such carriers). The Court stated, “[b]ecause the President, not [DOT], could authorize (or not authorize) cross-border operations from Mexican motor carriers, and because [DOT] has no discretion to prevent the entry of Mexican trucks, its EA did not need to consider the environmental effects arising from the entry.”). Likewise, in the context of an EIS, CEQ guidance states that agencies are not expected to discuss remote or highly speculative transboundary consequences of their permitting decisions.<sup>16</sup>

The Co-Lead Agencies for the GPT EIS have no authority vis a vis the approvals required for GPT to prevent the mining of coal in the United States, or the consumption of coal in Asia. Therefore, their actions in permitting the GPT project cannot be considered a “cause” of those activities.

## **2. GPT is not a cause of the life-cycle impacts of commodities to be shipped through the port.**

Peabody operates in a global marketplace and efficiently produces an essential commodity that provides fuel for electricity and steelmaking. Coal remains the largest global source of electricity generation and demand for the commodity continues to increase around the world. According to a report by the International Energy Agency (“IEA”) released in December 2012, coal will come close to overtaking oil as the world’s top energy source by 2035.<sup>17</sup> According to Platts Worldwide Power Plant Database, an additional 370 gigawatts of power will need to come online over the next five years to meet anticipated energy demand – the equivalent of at least one new 500 megawatt coal-fueled power plant every three days through 2016. Meeting this new demand will require the international coal market to grow by more than 1 billion tons. In short, the amount of coal moving through GPT, even if the Terminal reaches its maximum capacity, will have no material impact on the rapidly growing global coal market.

(a) Long-term U.S. coal production will continue with or without GPT.

The U.S. Energy Information Agency (“EIA”) expects that coal will remain the largest source of electricity generation in the U.S. through 2035 and western coal production is projected to grow

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<sup>16</sup> See CEQ, Memorandum to Heads of Agencies on the Application of the National Environmental Policy Act to Proposed Federal Actions in the United States with Transboundary Effects, July 1997.

<sup>17</sup> IEA, Medium-Term Coal Market Report 2012 — Market Trends and Projections to 2017 (Dec. 2012).

through this period.<sup>18</sup> Right now, coal fuels approximately 40% of U.S. electricity.<sup>19</sup> There are at least fifteen new coal-fueled power plants currently in development around the country.<sup>20</sup> Further, EPA predicts that the costs of carbon capture and sequestration will decline in the future as the technology matures and is utilized more widely, which will make it possible to permit more coal-fueled power plants in the future. Finally, demand for PRB coal in the United States is particularly robust and Western coal producers are projected to increase their share of total U.S. coal production over the next 20 years.<sup>21</sup> Currently, PRB coal is shipped to and consumed in 38 states across the country.<sup>22</sup> PRB coal is also currently exported through existing North American ports to Asia, Europe and South America.

(b) GPT will not cause an increase in consumption of coal in Asia.

There is likewise little question as to the future of coal in Asia. The EIA forecasts that 95% of the anticipated net increase in global coal consumption over the next 20 years will come from Asia with India and China alone accounting for half of global energy growth through 2035.<sup>23</sup> By 2025, India is expected to overtake the United States as the world's second largest user of coal.<sup>24</sup> Coal combustion is expected to occur and significantly increase in Asia with or without the involvement of United States coal producers and export facilities, though, as detailed in other comments, the domestic economic benefits of U.S. participation in this market would be substantial.

The more relevant question in the context of GPT EIS scoping is whether there is a close causal connection between this Terminal in particular and *more* coal combustion in Asia than is already expected to occur. In light of (i) the volume of anticipated exports from GPT in comparison to anticipated demand in Asia, (ii) existing global coal reserves and global export competition to meet this demand, and (iii) additional existing and planned export capacity in the United States, GPT's inconsequential capacity will have no impact on the volume of coal consumed in Asia. However, again, the number of intervening variables between the permitting decisions currently before the Co-Lead Agencies and conclusions about future coal consumption in Asia are so numerous and speculative as to make this question inappropriate on its face.

As described in detail in PIT's scoping comments, GPT's currently anticipated coal export capacity of 48 million tons per year will simply not be sufficient to create foreseeable, non-speculative impacts on international coal prices or consumption patterns. Asian coal demand is measured in billions of tons, not millions — exceeding 5 billion tons in 2011.<sup>25</sup> As such, full GPT capacity (if ever achieved) represents less than one percent of current Asian coal demand. Recent analysis by Wood Mackenzie indicates that Chinese coal import demand alone could reach one billion tons by 2030, while India's imports will be at least 400 million tons in that same year.<sup>26</sup> Based on these projections, even in a scenario where GPT directs all of its coal export capacity to Asia in 2030,

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<sup>18</sup> EIA, Annual Energy Outlook 2012 (June 2012).

<sup>19</sup> EIA, What is the role of coal in the United States? (July 2012).

<sup>20</sup> EPA, Proposed Rule: Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, at 46 (pre-publication version) (Mar. 27, 2012).

<sup>21</sup> EIA, Annual Energy Outlook 2013 — Early Release (Dec. 2012).

<sup>22</sup> Timothy J. Considine, *Powder River Basin Coal: Powering America, Final Report to the Wyoming Mining Association* (December 2009).

<sup>23</sup> EIA, International Energy Outlook 2011, 79 (Sept. 2011).

<sup>24</sup> IEA, World Energy Outlook 2012, Executive Summary, at 5 (Nov. 2012).

<sup>25</sup> EIA, International Energy Statistics (2011).

<sup>26</sup> *China, India 2030 coal imports may hit 1.4 billion tons*, REUTERS, March 14, 2012.

those exports would still satisfy only three percent of the import demand coming from China and India alone.

At any time, these countries could also choose to shift to heavier reliance on their own significant domestic reserves. China is the world's largest coal producer, producing almost 3.5 billion tons in 2011.<sup>27</sup> This rate of production is backed up by more than 100 billion tons of reserves.<sup>28</sup> As a result, China's behavior in the international market is that of a "cost minimizer"; it will import heavily when the price is right and largely rely on domestic coal when imports are unattractive.<sup>29</sup> Import supply and import prices are therefore not determinative of Chinese coal use. If imports are unavailable or more expensive, China will simply use its own domestic supply.

GPT exports will also compete for Asian market share against much larger coal export operations in Indonesia (currently exporting more than 300 million tons per year) and Australia (expected to reach 350 million tons of exports per year by 2017).<sup>30</sup> For this reason, the United States is expected to remain a marginal coal supplier over the long term, meeting only a small portion of world coal demand.<sup>31</sup>

Based on the number and variability of the factors discussed above, any assessment of the potential indirect or cumulative effects of GPT on coal demand would be highly speculative. In response to this complexity, GPT project opponents assert simply that any increase in coal supply is likely to lead to lower coal prices, which in turn will cause more consumption. The plaintiffs in *Wildearth* made a similar assertion. The court summarily rejected this argument:

[E]ven assuming that the price of coal were to rise in the absence of coal from the [PRB lease] tracts, Plaintiffs do not point to any competent evidence to support their assertion that the price increase would be so significant that energy consumers would substitute coal with energy sources with a lesser or no carbon dioxide contribution let alone at a rate and in a manner that would help ameliorate the alleged climate change impacts identified by Plaintiffs. And the market behavior of coal consumers is only one link in a long chain of assumptions, suppositions, and predictive judgments required to connect Plaintiffs' localized interests, the effects of global GHG emissions, and the leasing of the [PRB lease] tracts."

*Wildearth Guardians*, 2012 U.S. Dist. at \*21-\*22.

Similarly, in the instant case, project opponents' assertion that the availability of an additional 48 million tons of marginal coal supply per year from GPT — equal to only a fraction of total import demand in Asia and interchangeable with domestic reserves and lower-cost exports from other Asia-Pacific countries whenever it is economically beneficial — will somehow cause an increase in overall Asian coal consumption, is unsupported. Any effect U.S. exports might have on Asian coal prices, for example, during supply bottlenecks or demand surges, would be short-lived and situational. Short-term price changes are understood not to impact energy demand because of the

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<sup>27</sup> World Coal Association, *Coal Facts 2012*.

<sup>28</sup> Richard K. Morse and Gang He, *The World's Greatest Coal Arbitrage: China's Coal Import Behavior and Implications for the Global Coal Market*, Working Paper #94, Stanford Program on Energy and Sustainable Development (PESD), at 20 (August 2010).

<sup>29</sup> *Id.*

<sup>30</sup> IEA, *Medium-Term Coal Market Report 2012 — Market Trends and Projections to 2017* (Dec. 2012).

<sup>31</sup> EIA, *International Energy Outlook 2011* at 79 (2011); EIA, *International Energy Outlook 2010* at 72 (2010).

expense and effort involved with modifying or replacing in-place energy technology and infrastructure to respond to price increases for a particular fuel.<sup>32</sup>

Long-term energy choices in Beijing and New Delhi are simply not going to be made based on the availability of an additional 48 million tons of coal thousands of miles away in Whatcom County. Speculating about the precise impact of GPT on Asia's energy choices is too remote from the permitting decisions at issue to warrant further consideration.

**3. The life cycle impacts of coal destined for export through GPT have already been adequately addressed in the context of state and federal mine approvals.**

Finally, the environmental effects of PRB mining have already been adequately considered by the agencies responsible for approving these activities. In Wyoming, for example, there are multiple layers of regulatory review of mine development projects by numerous agencies, including not only BLM, but the United States Forest Service, the Office of Surface Mining, the Wyoming Department of Environmental Quality/Air Quality and Land Quality Divisions, and various county boards of commissioners. NEPA law and policy clearly provide that EIS reviews by these permitting agencies should not be double-checked or redone in connection with other projects in distant jurisdictions. As such, any consideration of potential PRB impacts in the GPT EIS is duplicative and unnecessary.

It is worthy to note that BLM has completed a regional technical study called the PRB Coal Review to help evaluate the cumulative impacts of coal and other mineral development in the PRB. The PRB Coal Review develops a forecast of reasonably foreseeable development in the PRB through 2020 and predicts the cumulative impacts that can be expected to occur to air, water, socio-economic and other resources if development occurs as projected in the forecast.<sup>33</sup>

The PRB Coal Review reports and analysis are used and referenced in the cumulative impact analyses in NEPA documents prepared to evaluate coal leasing in the PRB. BLM notes in the Review that almost all of the coal that is currently being mined in the Wyoming PRB is being used by coal-fired power plants to generate electricity. As a result, a discussion of emissions and by-products that are generated by burning coal to produce electricity is included in each EIS for a new coal lease in the PRB. This discussion includes an extensive assessment of potential impacts of climate variability and the contribution of PRB coal consumption to global GHG emissions.

In its Final EIS for the Wright Area Coal Lease Applications in the PRB ("WA EIS"), BLM notes that in addition to domestic market opportunities for PRB coal "there is potential for sales outside the U.S." The WA EIS projects GHG emissions incident to consumption of the coal reserves to be leased and concludes that it is unlikely that rejection of the pending coal lease applications would result in a decrease in GHG emissions because "there are multiple other sources of coal that, while not having the cost, environmental, or safety advantages, could supply the demand beyond the time that [the relevant PRB mines] would complete recovery of their existing leases."<sup>34</sup>

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<sup>32</sup> THE STRUCTURE OF WORLD ENERGY DEMAND 3, Robert S. Pindyck, The MIT Press Cambridge, MA (1979).

<sup>33</sup> See BLM, *Powder River Basin Coal Review*, available at

[http://www.blm.gov/wy/st/en/programs/energy/Coal\\_Resources/PRB\\_Coal/prbdocs.html](http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/prbdocs.html).

<sup>34</sup> See e.g., Final EIS, Wright Area Coal Lease Applications, at 4-141 (2010).

There has also been considerable focus during the GPT scoping process on the “cumulative impacts” of consumption of PRB coal in Asia. While CEQ guidance advises that an agency address cumulative impacts of GHG emissions and climate change in its NEPA analysis, this guidance does not require an agency to link specific climate changes or related environmental impacts to a particular project or emissions.<sup>35</sup> CEQ maintains that such a direct linkage is difficult to isolate and understand and is not currently useful.<sup>36</sup>

BLM’s cumulative impacts analysis for GHG emissions from combustion of PRB coal has been specifically affirmed by the Interior Board of Land Appeals (“IBLA”), which in turn cites CEQ guidance in support of its decision.<sup>37</sup> The IBLA upheld a BLM EIS for the West Antelope II lease tract in the PRB (“WA II EIS”). The WA II EIS estimated GHG emissions from proposed mine operations and from combustion of coal extracted from the mine, but also acknowledged that the precise level of emissions from the proposed project would be determined by numerous unknown factors (such as where and how the coal would be burned, and future emission limits and technological advances that may be in place at the time of combustion) and thus the extent and significance of effects on climate change could not be determined.<sup>38</sup> As the IBLA explained, “given the current state of science, BLM determined that it is not possible to reach conclusions as to the extent or significance of the effects on global climate from future emissions of electricity-generating power plants using WAI coal.” The IBLA went on to find that:

BLM’s environmental analysis, declining to posit a precise correlation between specific climatological changes or the environmental impacts thereof attributable to projected GHG emissions from the particular project, does not fall short of NEPA’s “hard look” requirement for promoting informed decision-making, where evidence in the record as to the state of the science confirms the speculative nature of such impacts.<sup>39</sup>

As such, federal agencies have not only considered the potential impacts of combustion of PRB coal on global climate change in prior EIS documentation, they have also identified the limited utility and accuracy of project-specific analysis in this context.

## **VI. Conclusions**

In sum, the GPT project offers a direct response to the Obama Administration’s export challenge – capitalizing on the United States’ rich resources, world class workforce, and global environmental leadership – to respond to rapidly expanding energy needs in markets around the world. The EIS for NEPA/SEPA review of the GPT project must be conducted in a manner that advances this opportunity while at the same time thoroughly examining the true direct, indirect and cumulative impacts associated with the proposed Terminal.

While the Co-Lead Agencies have made clear that the EIS process is not to be used as a forum for engaging in a political debate on the merits of a project, opponents of the GPT project continue to

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<sup>35</sup> Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions, CEQ, 1-2 (Feb. 2010).

<sup>36</sup> *Id.* at 3.

<sup>37</sup> *In re Power River Basin Resource Council*, 180 IBLA 119, 133 n.15. (IBLA, 2010).

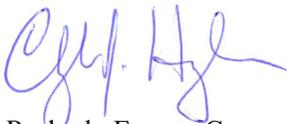
<sup>38</sup> *Id.* at 134; *see also* Final EIS, West Antelope II Coal Lease Application., at 4-141 (2010).

<sup>39</sup> 180 IBLA at 134.

propose an elongated and impractical scope for the EIS as a proxy for their general opposition to coal as a fuel choice for the 21st Century. These scoping proposals are political rather than project-based and should not be entertained. Instead, the focus of the EIS process should be to fully evaluate those truly meaningful environmental impacts that can be directly and effectively mitigated by Agency decisionmakers. As such, the scope of the GPT EIS must be confined to reasonably foreseeable potential impacts and may not include remote and speculative effects that serve only to complicate, delay and ultimately distort the decisionmaking process for the relevant agencies. With regard to GPT, the project applicant has suggested a scope for the EIS that will ensure a careful and comprehensive assessment of potential environmental impacts associated with the Terminal and the development of targeted and effective mitigation strategies to respond to confirmed impacts.

Peabody looks forward to the Co-Lead Agencies' timely completion of the EIS for the Project's in accordance with NEPA and SEPA requirements.

Respectfully submitted,



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