



Region 10 RTOC

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

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January 22, 2013

GPT/BNSF Custer Spur EIS Co-Lead Agencies
c/o CH2M HILL
1100 112th Avenue NE, Suite 400
Bellevue, WA 98004

RE: Proposed Gateway Pacific Terminal and Custer Spur Projects

Dear Madam or Sir:

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

The RTOC is a partnership between the United States Environmental Protection Agency Region 10 (EPA) and elected Tribal representatives from Alaska, Idaho, Washington, and Oregon. The primary function of the RTOC is to serve as a partnership with the EPA to further Tribal environmental objectives at the regional level, to serve as a liaison between the EPA and Tribes regarding information exchange, and to provide assistance to the National Tribal Operations Committee (NTOC).

The RTOC is extremely concerned about the impacts of the proposed Gateway Pacific Terminal (GPT) at Cherry Point. It is apparent that the impacts, individually and cumulatively, of this project will be felt across the Northwest. Accordingly, the RTOC requests that a comprehensive environmental impact statement (EIS) be completed that analyzes impacts and alternatives of this project. This EIS must analyze the probable significant adverse environmental impacts that will displace treaty fishing sites; impact cultural resources; generate unacceptable levels of dust and diesel emissions; pollute groundwater and rivers in the vicinity of mining activity on public lands; create real risks of derailments through traditional hunting and gathering sites; and create unsafe navigation conditions for tribal fishers and others on the river. The regional impacts are also profound, including vessel traffic risks in salmon rearing grounds in waters off Alaska or at other ports of call. The global impacts of coal export and coal combustion are significant, particularly when the future is considered.

Coal mining and coal transport (by both rail and sea) are problematic when conducted at such scale. Tribal economies, communities, and human health are foremost amongst concerns. The coal industry itself acknowledges that coal markets are traditionally volatile and that coal terminals are financially risky ventures. Within the last week, significant concern has been raised

in China, itself, about impacts of coal on air quality with calls for new and significant regulations that may diminish the very need for the coal exports that this proposal would support.¹

In completing its analysis and environmental permit reviews, the Army Corps of Engineers must conduct government-to-government consultation with the tribal communities impacted by this proposal. This request for comments on scoping does not substitute for the Corps' responsibilities to consult individual with tribal governments. Each federal agency is responsible for fulfilling their trust obligation to tribes, to avoid putting our treaty rights at risk. Prior to reaching any decisions concerning the scope of the impacts, the federal government must establish a protocol approved by each tribe in the region, for consultation with each federal agency, with respect to all the NW port proposals as well each individual project. Those protocols must adhere to the highest standards in federal regulations and policies, consistent with your trust obligations.

Given the magnitude of the coal export proposals associated with coal extraction in the Powder River Basin and the significant environmental and human health risks associated with these activities, the RTOC urges that the Corps join with other appropriate federal and state agencies and immediately begin the process of evaluating the cumulative impacts of coal extraction, shipping, export, and utilization in Asian power plants on human health and the environment through a comprehensive Environmental Impact Statement. This EIS must be completed prior to making any decisions to permit shipping terminals or additional extraction.

In short, we believe that the Corps should consider the full scope of the impacts of coal to the environment both cumulatively and specific to each individual tribe in the region.

In addition to these general comments, the RTOC has the following specific comments on the impacts of the proposal that should all be considered and analyzed in the EIS:

1. ENVIRONMENTAL JUSTICE

The EIS must incorporate an analysis of environmental justice issues. Environmental justice is mandated as a component of NEPA review, under guidance provided by the Council for Environmental Quality (CEQ).² The proposal to build and operate the largest coal terminal in all of North America is likely to impose disproportionately high and adverse human health or environmental effects of its programs on minority, low-income, or tribal populations.

Moreover, Executive Order 12898 identifies four important ways agencies need to consider environmental justice under NEPA:

- Each Federal should analyze the environmental effects, including human health, economic, and social effects of Federal actions, including effects on minority populations, low-income populations, and Indian tribes, when such analysis is required

¹ See

http://www.slate.com/blogs/future_tense/2013/01/14/beijing_pollution_breaks_china_s_air_quality_index_why_china_needs_a_war.html.

² See *Environmental Justice Guidance Under the National Environmental Policy Act* (December 10, 1997).

by NEPA.

- Mitigation measures identified as part of an environmental assessment (EA), a finding of no significant impact (FONSI), an environmental impact statement (EIS), or a record of decision (ROD) should, whenever feasible, address significant and adverse environmental effects of proposed federal actions on minority populations, low-income populations, and Indian tribes.
- Each Federal agency must provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.
- Review of NEPA compliance must ensure that the lead agency preparing NEPA analyses and documentation has appropriately analyzed environmental effects on minority populations, low-income populations, or Indian tribes, including human health, social, and economic effects.

Impacts between coal transport/export and human health has been well-documented by physicians and other health professionals. Those effects are particularly acute for tribes, particularly when considering the exercise of treaty rights -- subsistence fishing, hunting and gathering.

As part of its responsibilities under the CEQ guidance and Executive Order, the environmental justice impacts of the export facility impacts and the vessel traffic impacts must be analyzed, particularly focusing on human health and derogation of treaty fishing, hunting and gathering rights, as well as impacts to sacred cultural sites. Moreover, a Health Impact Assessment for tribal communities must be completed that analyzes the relationship between coal transport/export and increased risk to human health.

2. CULTURAL AND FISHING SITES

The EIS must analyze the risk of loss of culture and cultural values due to loss of fishing areas, gear, the ability to fish, hunting and gathering, and ceremonial or religious areas used by tribal ancestors for countless generations. For example, Cherry Point has the Lummi place name, *Xwe'Chi'Exen*, signifying a Lummi and Coast Salish sacred cultural heritage site. The Lummi Nation announced that it regards this site as sacred.³ The proposal would locate the coal terminal on a significant cultural heritage site, as mapped and officially designated by the Washington State Office of Archeology and Historic Preservation.

As all the government agencies are aware, illegal grading occurred without a permit that resulted in archeological disturbance at the site in the summer of 2011. The EIS should determine whether the illegal grading altered hydrology on the site, i.e., reduced the size of wetland areas and streamflows and if so the adverse effects on the near shore intertidal wetland system.

³ See www.treatyprotection.org.

The EIS must identify and study all cultural and archeological sites along the rail and vessel transportation corridor, from mine to sea, and assess possible significant environmental impacts on these resources by virtue of pollutants, as identified elsewhere in the EIS (e.g., fugitive coal dust, diesel emissions, catastrophic spill in land or water).

Moreover, the rail lines travel near many many tribal traditional hunting and gathering areas and are adjacent to waters important to fish habitat. It also crosses many of the rivers vital to treaty-reserved resources. The EIS must study how the cumulative coal train traffic will adversely affect tribal traditional fishing, inland hunting and gathering areas by crossing or otherwise harming rivers and watersheds, Columbia River, the Salish Sea, and the Pacific Ocean.

This should include noise pollution and vibration affecting fish and wildlife habitat; pollution from diesel emissions and fugitive coal dust; increased risk of derailments due to sun kinks, weight, mudslides, and aging infrastructure further weakened by coal train weight; and risk of environmental damage to Washington watersheds, the Columbia River, the Salish Sea, and the Pacific Ocean due to a coal train derailment.

3. TRAINS

Transporting coal from the Powder River Basin to proposed west coast terminal sites would require unprecedented levels of regional rail usage. There are concerns not only about dramatically increased rail traffic, but also about negative impacts associated with coal trains specifically, due to train length, weight, content, and polluting capacity. The terminal at Cherry Point would see the addition of approximately 30 miles of coal trains daily to the BNSF rail line that runs along the Puget Sound coast. This would likely constrain passenger rail and adversely affect the transport of freight other than coal. The Washington state rail system is already nearing practical capacity; infrastructure would need to be upgraded to accommodate proposed usage. BNSF has been largely silent on the issue of rail improvements; it remains unclear who would pay, and what kind of physical and economic disruption such upgrades would cause.

4. TRAFFIC

“Findings have shown that increases in rail traffic have the potential to result in diseconomies as a result of traffic delays,” according to a University of Texas Transportation Center study.⁴ Recent studies conducted by Gibson Traffic Consultants in the western Washington cities of Seattle, Edmonds, Burlington, Marysville, Mt Vernon, and Stanwood suggest potentially severe consequences due to the proposed increase in rail traffic intensity associated with GPT.⁵ Adverse effects include increased risk of accidents, impacts to the city’s level of service, decreased ability to provide effective emergency response times, and possible interference with the local freight delivery systems affecting the local economy.

5. MARINE VESSEL TRAFFIC

⁴ Available at http://www.trforum.org/forum/downloads/2010_91_Impact_Intermodal_Rail_State_Planning.pdf.

⁵ These studies are available at <http://www.coaltrainfacts.org/gibson-traffic-consultants-bellingham-wa-traffic-study>.

Tens of thousands of marine vessels transit the Strait of Georgia every year, including those destined for the piers of the Alcoa Aluminum smelter, BP and Conoco-Phillips refineries at Cherry Point. Vessel traffic is growing due to a rise in exports and plans for an additional oil pipeline from Canada. The transport of 54 million metric tons per annum (Mtpa) of cargo, 48 Mtpa of which would be coal, from the proposed terminal at Cherry Point, would require the addition of over 900 annual transits (over 450 ships, coming and going) by some of the largest ocean-going vessels.

Many of these vessels will travel in environmental sensitive areas, including in the Salish Sea, the Pacific Ocean coastline along Washington, British Columbia, and Alaska, including the Gulf of Alaska, Unimak Pass and other passages through the Aleutian Islands, and the Bering Sea and other ocean areas around the Aleutian chain. Given the size of vessel involved, a spill of coal and/or oil would be devastating to marine life, shorelines, and tribal economies. Accordingly, the Environmental Impact Statement must assess the impacts of increased marine vessel traffic along the entirety of the marine routes.

6. MARINE IMPACTS

Sharply increased marine traffic, physical disruption of ecologically sensitive areas, and open coal storage in proximity to the Cherry Point Aquatic Reserve give rise to concerns about the proposed coal export facility, including impacts to tribal fishing areas.

The risk of collisions and oil spills rises as coal ships are added to waters already crowded with oil tankers. One hundred acres of open coal heaps will be in proximity to the aquatic reserve, in an area sometimes subjected to high winds; it is unknown to what extent coal dust in the water might affect the marine plants and animals. The construction of the facility and rail loops on wetlands and uplands, and of the wharf and trestle area over the water, has the potential to disrupt fragile ecosystems.

Increased vessel traffic will result in increased marine noise. The impacts of noise from bulk carrier vessels, including their propellers (low frequency noise exceeding 180 decibels) could have significant impacts on the marine environment, including whales, seals, porpoises, other marine mammals, as well as fish and shellfish.

Cherry Point herring are a keystone species, providing food for a number of other species; their status is currently fragile, and would likely be further stressed by activities associated with the coal port. Increased noise pollution, increased risk of collision with marine vessels, threatened food sources (herring), and a degraded marine environment would pose challenges to killer whales, salmon, and a myriad of shore and migratory bird populations. Ballast water carried from Asian ports and released into local waters could introduce invasive species, to possibly devastating consequence.

7. FISHERIES

Partly due to its deep water feature, Cherry Point has been an especially rich and fertile marine area. The waters around Cherry Point have been part of tribal salmon and lingcod fisheries. There has also been a tribal Dungeness crab fishery.

Damages to the local herring population would result in damages to the salmon and lingcod fisheries, as herring are a primary source of nutrition for these fish. Heavily increased marine traffic could result in losses both the fisheries and the fisherman, as crabbing gear can be destroyed or carried away by large marine vessels. Any impacts to these resources constitute impacts to tribal resources that must be specifically addressed.

8. COAL DUST

Coal dust is notoriously difficult to control. BNSF estimates that each uncovered car loses between 500 pounds and a ton of coal dust en route.⁶ It is unknown how much coal dust will be released into the air, onto the land, and into the water from the from the one hundred acres of open, continuously turned-over, coal heaps in storage at the terminal site. There are concerns about train derailments, the effects of dust on human health, local clean water supplies, and on the marine environment.

As the attached picture of a coal train in the Columbia River Gorge indicates, the methods of containing coal dust, especially in adverse weather conditions (wind, rain) are unproven. It is also uncertain how long they last given the jostling that occurs on the long route from the mining areas to the Cherry Point. Lastly, it is uncertain which party would pay for dust mitigation measures.



⁶ See http://www.huffingtonpost.com/2011/11/23/coal-port-pacific-northwest-energy-pollution-climate-change_n_1109289.html.

9. AIR QUALITY

Both the means of transporting coal and the coal itself present potential air quality challenges. Diesel particulate matter emitted by the coal trains and ships; fugitive coal dust from the trains and from storage at the port site; and the toxins that blow over the Pacific to the West Coast of the U.S. from coal combustion in Asia, are all cause for concern with regard to regional air quality and the resultant health effect on humans who breathe that air.

10. NOISE

While there are many sources of noise from trains (high-pitch screeching, idling engines; moving cars, etc.), horn sounding is the most significant. Federal rules governing the blowing of locomotive engine horns require that engineers of all trains sound horns for at least 15-20 seconds at 96-110 decibels (dB) at all public crossings. Decibels in the range of 80-105 are labeled extremely loud, whereas those above 105 are dangerous. Decibels are logarithmic, meaning that 100 decibels is ten times as loud as 90, 110 decibels is ten times as loud as 100, and so on.

While impacts to quality of life from repeated loud noise are self-evident, chronic noise exposure has proven adverse health effects, including impaired sleep and cognitive function, and cardiovascular effects.

11. PUBLIC HEALTH

Frequent long trains at rail crossings will mean delayed emergency medical service response times, as well as increased risk of accidents, traumatic injury, and death. This is particularly the case in rural areas, including tribal communities, where crossing are limited and emergency service are distant.

The scale of the proposed terminal would require a dramatic increase in the number of diesel-burning locomotives and marine vessels affecting airsheds along the train line (including Spokane) and those impacted by increased marine vessels. Diesel particulate matter is a particularly noxious form of air pollution, as it is of sufficiently small size (PM 2.5) to embed in the lung tissue. Diesel particulate matter is associated with both pulmonary and cardiovascular issues, including cancers, heart disease, and asthma. Children, teens and the elderly are especially vulnerable. Noise exposure can cause cardiovascular disease; cognitive impairment in children; sleep disturbance and resultant fatigue; hypertension; arrhythmia; and increased rate of accidents and injuries; and exacerbation of mental health disorders such as depression, stress and anxiety, and psychosis. Transporting coal to China in particular has the potential to raise levels of mercury in our waters. Mercury is associated with neurological dysfunction, as in ALS, Parkinson's, and Alzheimer's.

12. DERAILEMENTS

The use of frequent and lengthy trains to transport coal to the proposed terminal presents a real threat of impacts associated with train derailments.

Derailments of coal trains are a very real threat. A significant number of sizable coal train derailments have occurred in since 2010:

- St. Charles, VA – December 2012
- Grantville, KS – November 2012
- Painstville, KY – November 2012
- Ashby, NE – October 2012
- Oktaha, OK – September 2012
- Ellicott City, MD – August 2012
- Grants, NM – August 2012
- Raleigh, WV – August 2012
- Saline County, KS – July 2012
- Havelock, NC – July 2012
- Jefferson County, KS – July 2012
- Princeton, IN – July 2012
- Pendleton, TX – July 2012
- Northbrook/Glenview, IL – July 2012
- Mesa, WA – July 2012
- Portageville, MO – June 2012
- Junction City, KS – June 2012
- Collins, MS – May 2012
- Salmon Arm, BC – April 2012
- Houston, BC – February 2012
- Hinton, Alberta – January 2012
- Vanderhoof, BC – January 2012
- Montrose, IA – December 2011
- Vanderhoof, BC – December 2011
- Galland, BC – December 2011
- Topeka, KS – November 2011
- Peetz, NE – October 2011
- Charleston, WV – October 2011
- Emmett, KS – September 2011
- Denison, IA – July 2011
- Omaha, NE – July 2011
- Bloomington, IN – July 2011
- Ashdown, AK – July 2011
- Pueblo, CO – November 2010
- Surveyor, WV – April 2011
- Kearney, NE – September 2010
- Quantico, VA – August 2010
- Drummond, MT – August 2010
- Ferry Farm, VA – July 2010

A 2006 spill that resulted in 2 loaded cars being submerged in the Clark Ford River:

- Trout Creek, MT – November 2006, 2-4 cars spilled and submerged into Clark Fork River – resulting in EPA Superfund action.

This threat is even more significant in the areas impacted by this project. There have been over 70 mudslides along the train line since Thanksgiving, including one that derailed a freight train near Everett. This threat must be considered, analyzed, and alternative routes for the transport of coal considered.

13. GLOBAL IMPACTS

While the Gateway Pacific Terminal and the associated coal trains would be active in only the transport and export of coal, it is important to recognize that the only function of coal transport is to link coal mining to coal combustion: GPT and related enterprises need to be considered as part of this larger system. Each of the various processes associated with coal have negative effects on tribal economies, public health, communities, and the environment.

The coal mines in the Powder River Basin (Montana and Wyoming) continue to degrade local aquifers and water supplies. Coal combustion in China presents a serious health risk to the hundreds of millions of people, especially children, who live in affected airsheds. This has been very evident in recent weeks.⁷

Coal combustion is also associated with negative impacts that transcend geographic borders. Ocean acidification (including that in Puget Sound), acid rain, mercury emissions, and climate change affect global populations, regardless of where the coal is burned. The financial cost accrued from health and environmental damages from coal mining, processing, transport and combustion are currently estimated at a third to over half a trillion dollars annually in the U.S. alone.

For all these reasons, the RTOC requests that a comprehensive EIS be conducted examining the wide variety of impacts and proposing a wide variety of alternatives and mitigation measures. This must include a cumulative effects analysis looking at the cumulative impacts of other proposed coal terminals in the Region. The RTOC appreciates your consideration of these comments.

Sincerely,



Violet Yeaton
Region 10 RTOC
Tribal Caucus Co-chair

Cc: EPA

⁷ See <http://www.forbes.com/sites/kenrapoza/2013/01/14/as-coal-imports-rise-getting-harder-to-breathe-in-china-cities/>.