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January 21, 2013

Via USPS and via e-mail to comments@eisgatewaypacificwa.gov

GPT/BNSF Custer Spur EIS Co-Lead Agencies
c/o CH2MHILL
1100 112th Avenue NE, Suite 400
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Mr. Randel Perry
U.S. Army Corps of Engineers, Regulatory Branch, NW Field Office

Ms. Alice Kelly
Washington Department of Ecology, Northwest Regional Office

Mr. Tyler Schroeder
Whatcom County, Planning & Development Services

RE: Gateway Pacific Terminal Project – EIS Scoping

Dear Co-Lead Agencies SEPA Officials:

Pacific International Terminals, Inc., is the applicant proposing to construct and operate the Gateway Pacific Terminal. We thank you for this opportunity to comment on the appropriate scope of the Environmental Impact Statement (EIS).

On September 21, 2012, the U.S. Army Corps of Engineers published a Notice of Intent to prepare an EIS for the Gateway Pacific Terminal project and related Custer Spur Rail Expansion project pursuant to the National Environmental Policy Act (NEPA). See 77 Fed. Reg. 58531 (Sept. 21, 2012). On September 24, 2012, Whatcom County issued a Determination of Significance and Request for Comments on the Scope of the EIS pursuant to the State Environmental Policy Act (SEPA).

The U.S. Army Corps of Engineers, the Washington Department of Ecology, and Whatcom County Planning and Development Services (collectively "the Co-Lead Agencies") have held seven public meetings at locations throughout Washington. They have also been holding an "on-line public meeting" over the internet, and have invited the submission of written comments. During these meetings, Pacific International Terminals has been able to hear the public comments provided and the concerns expressed. We appreciate the productive input offered by many of the commenters and as the EIS process unfolds, we are committed to a careful evaluation of mitigation opportunities and project adjustments aimed at addressing public concerns and identified project impacts.

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The purpose of these meetings and the public comment period, however, is to gather information about the appropriate scope of the EIS, not to consider the merits of the project. The Co-Lead Agencies have been quite clear in focusing these meetings on scoping. In their "Guide to participating," the Lead Agencies emphasized that "[c]omments about the merits (pro or con) of the proposal . . . will not be considered in determination of the scope of the EIS" and that "[a]ll comments-whether received once or numerous times . . . will receive the same consideration." Despite these clear instructions, many opponents of the Project have attempted to use the scoping process to encourage public protests and unproductive grandstanding, sending numerous people to public meetings to repeat the same comments, and submitting numerous copies of form letters and emails.

We appreciate this opportunity to provide comments on the proposed scope of the EIS. This letter outlines Pacific International Terminals' comments. It does not address rail issues and the related proposal to upgrade the Custer Spur. Those issues are addressed in a separate letter being submitted by BNSF Railway Company (BNSF).

I. Project Proposal

Pacific International Terminals proposes to construct and operate the Gateway Pacific Terminal ("Terminal" or "Project"), a deep-water, multimodal terminal for the export and import of dry bulk commodities. The proposed Terminal will be located in the Cherry Point Industrial Urban Growth Area of Whatcom County, Washington, on property that has been zoned for Heavy Industrial Development.

Detailed information concerning the project proposal is provided in the Major Project Permit and Shoreline Substantial Development Permit Applications (June 10, 2011) and Supplemental Applications (March 16, 2012), the Project Information Document (February 28, 2011), and the Revised Project Information Document (March 2012). In addition, the following technical discipline reports have been or soon will be provided to the Co-Lead Agencies:

- AMEC, Wetland Determination and Delineation, Gateway Pacific Terminal Project (Feb. 22, 2008)
- AMEC, Wetland Identification and Delineation, Parcel 14 at Pacific International Terminals, Inc. Property (Sept. 26, 2011)
- AMEC, Engineered Traffic Study – REVISION 1, Gateway Pacific Terminal (Sept. 2012)
- AMEC, Preliminary Conceptual Compensatory Mitigation Plan – Revision 1, Gateway Pacific Terminal (March 2012)

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- AMEC, 2011 Baseline Sediment Sampling Report, Gateway Pacific Terminal (June 15, 2012)
- AMEC, 2011 Hydrologic and Hydrogeologic Investigation Report, Gateway Pacific Terminal (June 15, 2012)
- AMEC, Avian Baseline Inventory Report, Gateway Pacific Terminal (June 15, 2012)
- AMEC, Freshwater Streams Baseline Inventory Report, Gateway Pacific Terminal (June 15,2012)
- AMEC, Marine Biology Baseline Inventory, Gateway Pacific Terminal (June 15, 2012)
- Environ, Gateway Pacific Terminal Air Quality Technical Report (forthcoming)
- Environ, Gateway Pacific Terminal Environmental Noise Technical Report (Aug. 15, 2012)
- Finance & Resources Management Consultants, Inc., Review of Martin Associates Economic Impact Study (Oct. 24, 2011)
- Martin Associates, The Proposed Economic Impacts for the Development of a Bulk Terminal at Cherry Point (July 2011)

The proposed Terminal will consist of a wharf and trestle, materials handling and storage areas and associated equipment, and a rail connection and on-site rail loops. The Terminal has been designed with a capacity to export or import a maximum of 54 million metric tons of dry bulk commodities annually. The specific commodities shipped through the Terminal will depend upon market conditions and customer demand, and are likely to change over time.

Pacific International Terminals plans to construct the Terminal in two phases. At full build-out, the Terminal will have an East Loop providing open-air commodity storage, and a West Loop providing covered or silo storage. The East Loop would have capacity to ship up to 48 million metric tons per year of commodities, such as coal or calcined petroleum coke, that can be stored in open air, and the West Loop would have capacity to ship up to 6 million metric tons per year of commodities requiring covered storage, such as grains or potash.

As a separate but related project, BNSF plans to upgrade the Custer Spur, the existing rail line that runs approximately 6 miles from the main north-south rail line at Custer Wye to the Terminal.

II. Legal Framework

NEPA requires federal agencies to prepare "a detailed statement . . . on the environmental impact" of any proposed federal project "significantly affecting the quality of the human

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environment." 42 U.S.C. § 4332(2)(C)(i). SEPA imposes a similar obligation on state agencies and local jurisdictions in Washington. RCW 43.21C.030(2)(c).

The EIS must present decisionmakers with a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" of the agency's decision. Trout Unlimited v. Morton, 509 F.2d 1276, 1283 (9th Cir. 1974); Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council, 165 Wash.2d 275, 311, 197 P.3d 1153, 1171 (2008). In doing so, the 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).

The EIS should provide information necessary to evaluate the environmental consequences that are likely to occur and that are reasonable foreseeable. Sierra Club v. Marsh, 976 F.2d 763, 767 (1st Cir. 1992). It need not address potential impacts that are unlikely, remote or highly speculative. Sierra Club, 976 F.2d at 767; Trout Unlimited, 509 F.2d at 1283. The EIS should focus on significant impacts and not on "the accumulation of extraneous background data." 40 C.F.R. § 1500.2(b); accord WAC 197-11-030(2)(b).

During the scoping process, the Co-Lead Agencies are to determine the significant issues that require in-depth analysis in the EIS, and also to "[i]dentify and eliminate from detailed study the issues which are not significant or have been covered by prior environmental review." 40 C.F.R. § 1501.7(a)(2)-(3). Courts have emphasized that an important part of the scoping process is to narrow the issues to be addressed in-depth in the EIS. Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1117 (9th Cir. 2002); see also WAC 197-11-408(1)-(2).

With this legal framework in mind, the following sections suggest how the EIS should address some of the potential direct, indirect and cumulative effects associated with the Gateway Pacific Terminal Project, and suggest some alternatives that the EIS should evaluate.

III. Direct Effects

Consistent with judicial decisions interpreting NEPA and SEPA, Pacific International Terminals encourages the Co-Lead Agencies to include in the EIS a thorough discussion of significant direct effects of the proposed Gateway Pacific Terminal. Pacific International Terminals has provided the Co-Lead Agencies with considerable technical information regarding these direct effects in the Project Information Document, the Revised Project Information Document and numerous technical discipline reports. The technical reports

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are based on sound science and rely upon widely accepted scientific methods and protocols.

A. Air Quality and Emissions

The EIS should address the Project's potential effects on air quality as well as the design features, operational practices and commitments that Pacific International Terminals has made to avoid and minimize the Project's potential effects on air quality. Air quality issues are addressed in considerable detail in the report entitled "Gateway Pacific Terminal: Air Quality Technical Report."

The Project's primary potential direct impact on air quality stems from the potential for airborne dust and particulate matter resulting from the handling and storage of bulk commodities at the Terminal. As described in the Air Quality Technical Report, Pacific International Terminals will implement the best available technology to minimize and control these emissions. In addition to the possibility of airborne dust, the sources of air emissions include train locomotives operating on site, and vessels at and near the wharf. These sources will comply with applicable air quality regulations. The Air Quality Technical Report presents the results of detailed modeling of the potential emissions from the facility.

The Gateway Pacific Terminal will not have a significant direct effect on greenhouse gas emissions. The Air Quality Technical Report estimates greenhouse gas emissions from the construction of the Project to be approximately 12,537 metric tons of CO_2e, and estimates annual direct greenhouse gas emissions during operations to be approximately 97 metric tons. The Project's construction emissions would represent less than 0.01% of annual greenhouse gas emissions in Washington, and less than 0.0002% of annual emission in the United States. The emissions during operations would represent less that 0.0001% of the annual Washington emissions, and less than 0.000001% of U.S. emissions.[1] Accordingly, Project emissions would not have a significant effect on the environment.

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[1] These percentages were calculated based on WDOE's estimate of Washington State greenhouse gas emission in 2008 of 101.1 million metric tons CO_2e, and EPA's estimate of U.S. greenhouse gas emission in 2010 of 6,821.8 million metric tons CO_2e. See WDOE, Washington State Greenhouse Gas Emissions Inventory 1990-2008 Table 2 (Dec. 2010) available at http://www.ecy.wa.gov/climatechange/ghg_inventory.htm; EPA, Inventory of U.S. Greenhouse Gas Emission and Sinks: 1990-2010 Table ES-2 (Apr. 15, 2012) available at http://www.epa.gov/climatechange/ghgemissions/usinventoryreport.html.

The Air Quality Technical Report also calculates indirect GHG emissions from purchased energy, rail delivery and vessel traffic. Together annual direct and indirect GHG emissions during maximum capacity are

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individuals and groups who have raised concerns about greenhouse gas emissions in connection with the Project have focused on the alleged indirect effects of the Project. In particular, they have questioned whether the Project would lead to more coal being burned in Asia. As explained in greater detail in the Part IV of this letter, this is not a likely result of the Project, and therefore, should not be considered in the EIS.

B. Water Resources and Water Quality

Pacific International Terminals intends to implement substantial measures to avoid adverse impacts to water resources and water quality. The primary potential for the Project to affect water quality directly arises from water runoff.

During construction, substantial earth moving will occur and that brings with it the possibility of erosion, sedimentation and stormwater runoff to nearby wetlands, streams and drainage areas. As described in the Revised Project Information Document, Pacific International Terminals will implement measures during construction that are consistent with the Department of Ecology's General Permit for Construction Stormwater. It will also design and construct a stormwater management system consistent with the Stormwater Manual for Western Washington.

Once in operation, wastewater discharge will be limited to runoff from water used to control dust during site operations and sanitary wastewater. Runoff from Terminal operations will be managed through sediment basins and other related controls. The sanitary wastewater will be treated in prefabricated wastewater treatment systems and will eventually be discharged to septic fields pursuant to applicable requirements. Sanitary sewage from the washroom facility to be installed on the wharf would be treated, and trucked off site for further treatment and disposal in accordance with applicable regulatory requirements. No significant impacts are anticipated.

C. Wetlands & Streams

The EIS should address the Terminal's direct effect on wetlands, streams and related functions. Construction of the Terminal is expected to result in the permanent filling of approximately 147.5 acres of wetland and the temporary disturbance of approximately 11.3 wetland acres. It is also expected to permanently impact approximately 14,932 linear feet of streams and ditches, and temporarily impact approximately 3,437 linear feet of streams and ditches. Pacific International Terminals has proposed an extensive mitigation

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expected to be approximately 50,000 metric tons, which is less than 0.05% of annual GHG emissions in Washington, and less than 0.0007% of annual GHG emissions in the U.S.

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plan to compensate for these impacts by creating and enhancing wetlands and stream channels to replace and restore overall watershed functions.

Information about wetlands, potential impacts and mitigation is presented in:

- AMEC, Wetland Determination and Delineation Gateway Pacific Terminal Property (Feb. 22, 2008);
- AMEC, Wetland Identification and Delineation Parcel 14 at Pacific International Terminals, Inc. Property (Sept. 26, 2011);
- AMEC, Preliminary Conceptual Compensatory Mitigation Plan – Revision 1, Gateway Pacific Terminal (Mar. 2012); and
- AMEC, Freshwater Streams Baseline Inventory Report (June 15, 2012)

D. Terrestrial Habitat and Wildlife

The EIS should address the Terminal's potential direct effects on terrestrial wildlife and habitat. The Terminal would require the development of approximately 334 acres of land that includes forested and shrub habitat, as well as pasture and hayfields. Information concerning existing conditions and potential impacts can be found in the Revised Project Information Document and the Avian Baseline Inventory Report.

E. Aquatic Habitat and Wildlife

The EIS should address the potential direct effects of the Terminal on aquatic habitat and wildlife. The proposed Terminal includes a marine trestle and wharf that would be constructed in the nearshore environment on state-owned tidelands that would be leased from the Washington Department of Natural Resources.

The construction and operation of the marine trestle and wharf has the potential to affect marine resources. The Cherry Point area is recognized by the State of Washington as an aquatic reserve, with an environment that balances multiple unique features, including important natural habitats and deepwater access for industrial use. The herring stock found there has supported important commercial fisheries in the past and is an important resource for local Native American Tribes. The Cherry Point nearshore area also supports other fish species, marine mammals, and marine birds. Several federally listed species could occur in the vicinity of the Strait of Georgia, including Chinook salmon, steelhead trout, humpback whale, killer whale and Steller sea lion.

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Detailed technical information concerning existing conditions, potential impacts and Pacific International Terminals' proposed mitigation measures can be found in the following documents:

- AMEC, Marine Biology Baseline Inventory (June 15, 2012)
- AMEC, 2011 Baseline Sediment Sampling Report (June 15, 2012)
- Pacific International Terminals, Revised Project Information Document (March 2012)

F. Vehicle Traffic

The EIS should address the potential direct effects of the Terminal on vehicle traffic in the vicinity of the Terminal. Most of the direct effects on vehicle traffic will be associated with Project construction, when various trucks and construction worker vehicles will be coming to and from the Project site. Once in operation, employee vehicles could also affect traffic in the vicinity. These impacts are addressed in greater detail in the technical discipline report prepared by AMEC entitled "Engineered Traffic Study." The Whatcom County Planning Department determined the scope of the study documented in that report and identified particular intersections that should be considered. The EIS should use the same scope for its analysis.

The Engineered Traffic Study did not include an analysis of the effects of future additional trains on the flow of street traffic due to at-grade crossings. A separate report prepared by BNSF entitled "BNSF Custer Spur Highway/Railway Grade Crossing Traffic Impact Study" provides that analysis.

G. Socioeconomics

The socioeconomic impacts of the Gateway Pacific Terminal are significant and should be discussed in detail in the EIS. Both the federal government and Washington State have adopted policies and commenced initiatives to expand interstate commerce and export trade. The Project would help to implement both the President's National Export Initiative[2] and Governor Gregoire's 6-Point Export Plan.[3] At the local level, Whatcom County's

[2] Executive Order 13534 (Mar. 11, 2010), available at www.whitehouse.gov/the-press-office/executive-order-national-export-initiative.

[3] Office of the Governor (June 22, 2010) available at: www.governor.wa.gov/news/newsview.asp?pressrelease=1517&newstype=1.

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Comprehensive Plan calls for continued development of the Cherry Point Industrial Urban Growth Area.[4]

The Gateway Pacific Terminal project is a $665 million privately-funded project. The Project's construction and operation will have significant economic benefits for the local community and the region. Martin Associates, an economic consulting firm that has evaluated the economic impacts of hundreds of projects, performed an economic modeling analysis to estimate the economic impacts of the proposed project.[5] Martin Associates concluded that construction of the facility would:

- Support approximately 21.7 million person hours of construction-related employment;
- Generate approximately $411 million in wages;
- Generate approximately $624 million in local purchases; and
- Generate approximately $70.8 million in state and local tax revenues.[6]

At full build out, Martin Associates estimated that the project would result in:

- Approximately 1,230 direct, induced and indirect jobs in the regional economy;
- Approximately $11 million in annual state and local tax revenues;
- Approximately $17 million in local purchases by businesses each year;
- Approximately $126 million in annual regional economic activity through payrolls and purchase of goods and services; and
- Approximately $1.4 billion in revenue each year for businesses providing handling, vessel and other services to the Terminal.[7]

In addition to considering the Martin Associates study, the EIS preparers should consider a peer review of the study prepared by Jedidiah W. Brewer, Ph.D., Hart Hodges, Ph.D. and David M. Nelson, Ph.D.[8] These three Western Washington University economics professors concluded that Martin Associates' estimates of employment impacts were

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[4] Whatcom County, Comprehensive Plan (2010).

[5] Martin Associates, The Projected Economic Impacts for the Development of a Bulk Terminal at Cherry Point (July 2011).

[6] Id. at 6-7.

[7] Id. at 5.

[8] Finance & Resource Management Consultants, Inc. Review of Martin Associates Economic Impact Study (Oct. 24, 2011).

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reasonable. They also provided their own more conservative estimates of the project's likely economic impact. They attributed the different results to the use of different economic models, pointing out that both of the models used are nationally recognized and respected.

Others will likely encourage the EIS preparers to consider a report prepared by Public Financial Management, Inc., for Communitywise Bellingham.[9] In our view, this report does not present a serious analysis of the Project's potential economic impacts. It speculates about a wide range of potential impacts, without presenting any rigorous analysis or supporting information that might help to determine whether the hypothesized impacts are likely to materialize.

For example, the following is a typical statement in the Public Financial Management report: "To the extent that the perception of Bellingham and Whatcom County as 'clean and green' wanes, it could put potential gains in tourism and in-migration of skilled workers and entrepreneurs at risk."[10] The report does not assess the likelihood that the Project would cause a change in the area's clean and green reputation, and if so, how much the reputation might change. Likewise, it speculates that a reputation change could result in a reduction of tourism and in-migration, but presents no analysis demonstrating the likelihood or extent of such a result. In fact, the authors acknowledge that "it is possible that none of the risks identified in the prior section will be realized," that "we do not attempt to quantify a specific level of risk" and that "[o]ur analysis of risks makes a series of assumptions – each of which is uncertain."[11] The EIS preparers should review this report, but not accord it more consideration than it deserves. We believe it presents the type of speculation that should not be included in the EIS. See Sierra Club, 976 F.2d at 767; Trout Unlimited, 509 F.2d at 1283.

H. Land Use

The EIS should include a thorough discussion of land use and the relationship between the Project and the Whatcom County Comprehensive Plan. Whatcom County first adopted the Comprehensive Plan in 1996, and last updated it in January 2010. It is intended to guide growth in unincorporated areas of Whatcom County for the next 20 years. The purpose of the Comprehensive Plan is to establish a framework of goals, policies, and action items for the more detailed growth planning and implementation actions that will occur in designated urban growth areas and in the county's rural areas.

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[9] Public Financial Management, Inc., The Impact of the Development of the Gateway Pacific Terminal on the Whatcom County Economy (March 6, 2012).

[10] Id. at 27.

[11] Id. at 27.

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Under Whatcom County's 2009 Comprehensive Plan update, the area where the Project is located is designated as the Major Port/Industrial UGA, which covers approximately 7,000 acres. The subarea plan includes goals and policies aimed at guiding future land-use policies, regulations, and development.

The Cherry Point Heavy Impact Industrial zone where the Project is located has special characteristics of regional and international significance for the siting of large industrial facilities, including deep water and access to rail transportation. The BP Cherry Point Refinery, ALCOA-Intalco Works, and ConocoPhillips Ferndale Refinery together occupy approximately 4,100 acres in Whatcom County's Cherry Point Heavy Impact Industrial zone. All of these industries are dependent on water and rail access for moving commodities to and from their facilities.

Whatcom County identified this area for deep-water port industrial development, and the Comprehensive Plan and zoning regulations provide for this type of development (WCC 20.68.010). Whatcom County Code 20.68.050 (Permitted uses), subsection .059, specifically identifies "Bulk commodity storage facilities, and truck, rail, vessel and pipeline transshipment terminals and facilities" as an outright permitted use.

The County's Shoreline Management Program designates the shoreline within the Project area as part of the Cherry Point Management Area. This designation is intended to balance the natural habitat features found in the Cherry Point area with the unique features that make it ideal for water-dependent facilities. The Shoreline Management Program specifically identifies water-dependent industrial facilities as the preferred use in the area, and the proposed Terminal is consistent with the Shoreline Management Program for the development of the project site.

IV. Indirect Effects

In addition to considering the direct effects of a proposed action, NEPA and SEPA require an EIS to address the significant indirect effects of a proposed action. 42 U.S.C. § 4332(2)(C); 40 C.F.R. 1502.16, 1508.8. Unlike "direct effects" that are caused by a proposed action and "occur at the same time and place," "indirect effects" are effects 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(a)-(b).

An EIS need only consider effects that are proximately caused by the proposed action. Sabine River Authority v. U.S. Dep't of Interior, 951 F.2d 669, 680 (5th Cir.), cert. denied, 506 U.S. 823 (1992). As the Supreme Court has explained, "a 'but for' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA . . . . NEPA

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requires a 'reasonably close causal relationship' between the environmental effect and the alleged cause." U.S. Dep't of Transp. v. Public Citizen, 541 U.S. 752, 767 (2004) (internal citations omitted). "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 cause chain is too attenuated." Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 774, 103 S.Ct. 1556, 1561 (1983); see also Washington Department of Ecology, Guidance for Ecology Including Greenhouse Gas Emission in SEPA Reviews 3 (June 3, 2011).

The following sections address the extent to which various issues would be appropriate to consider in the EIS analysis of indirect effects.

A. International Bulk Commodity Trade

The Gateway Pacific Terminal will provide infrastructure to allow the export and import of dry bulk commodities over the next 50 to 100 years. The applicant, Pacific International Terminals, will not decide what is shipped through the Terminal. Rather, the particular commodities shipped through the Terminal will depend upon the market forces that affect international trade. The amounts and kinds of commodities shipped through the Terminal are likely to change over time.

Like any other sector of the economy, international trade is subject to a complex mix of market forces. Population growth, economic growth and the availability of credit all affect global demand for commodities. The demand for commodities from the U.S. is affected by the U.S. supply, prices and the relative strength or weakness of the U.S. dollar.

In fact, the volume, value and type of goods exported from the United States vary considerably from year-to-year and over longer periods of time. For example, the total value of products exported from the United States was $1.16 trillion in 2007, $1.30 trillion in 2008, $1.06 trillion in 2009, $1.28 trillion in 2010, and $1.48 trillion in 2011.[12] The total volume of waterborne foreign trade with the United States (in metric tons) also varies:

2007	2008	2009	2010[13]
1,375,931,614	1,376,529,311	1,202,017,487	1,304,934,773

[12] International Trade Centre, Trade Map – International Trade Statistics, available at http://www.trademap.org/tradestate/Product_SelCountry_TS.aspx.

[13] U.S. Marine Administration, Maritime Statistics, available at http://www.marad.dot.gov/library_landing_page/data_and_statistics/Data_and_Statistics.htm.

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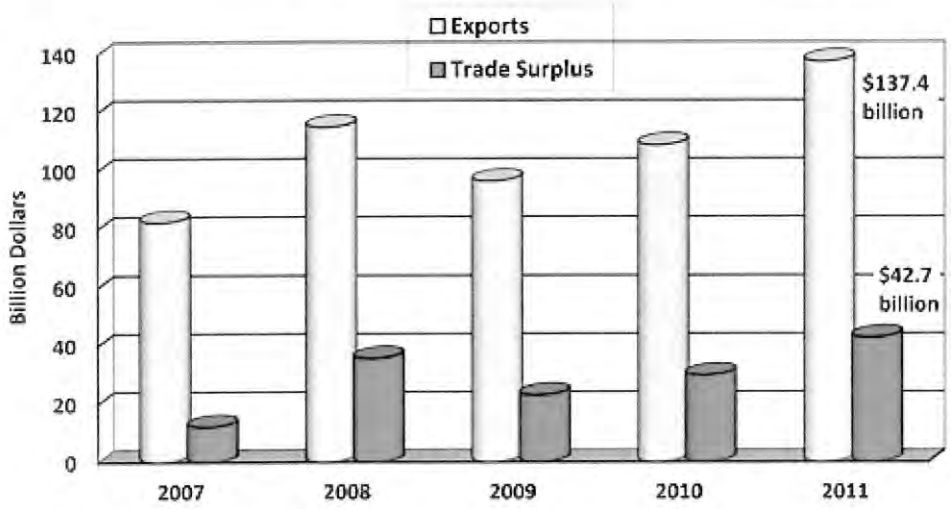
Exports of particular commodities or types of commodities are even more variable than the total amount of exports. For example, the value of agriculture exports during the 2007 to 2011 period ranged from a low of just over $80 billion to a high of almost $140 billion:[14]

Fiscal Year Agricultural Exports and Trade Surplus



The following table comparing export volumes of various agricultural commodities forecasted for fiscal years 2012 and 2013 (in million metric tons) with fiscal year 2011 exports shows considerable variability in only three years:[15]

Commodity	FY 2011 Actual	FY 2012 Forecast	FY 2013 Forecast
Wheat	34.5	28.5	32.0
Corn	45.2	39.0	33.5
Soybeans	40.3	37.3	30.2

[14] U.S. Department of Agriculture, International Agricultural Trade Report (Nov. 16, 2011), available at http://www.fas.usda.gov/info/IATR/111611_Exports/default.asp.

[15] U.S. Department of Agriculture, Outlook for U.S. Agricultural Trade (Aug. 30, 2012), available at http://www.ers.usda.gov/publications/aes-outlook-for-us-agricultural-trade/aes75.aspx.

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Fertilizer is another example of a variable export commodity. The volume of fertilizers exported (in tons) has varied greatly over the past two decades:

1990	1995	2000	2005	2010[16]
23,408,759	21,566,998	16,417,808	13,181,820	10,571,377

Coal exports reflect a similar volatility. According to the Energy Information Administration, annual U.S. coal exports in short tons for the past decade have been:[17]

2001	2002	2003	2004	2005
50,012,000	40,393,000	43.735,000	49,316,000	51,690,000

2006	2007	2008	2009	2010
51,264,000	60,607,000	83,478,000	60,404,000	83,178,000

2011
107,000,000

Given the lifespan of an infrastructure project like the Gateway Pacific Terminal and the variability that international trade is likely to experience during that lifespan, it is impossible to predict which commodities might be transported through the Terminal at any particular time.

Some have urged the Co-Lead Agencies to conduct a lifespan analysis of the environmental impacts associated with the production, transportation and consumption of commodities that may be transported through the Terminal. In particular, some have asked that the EIS consider the environmental impacts associated with mining and combusting coal. If it were appropriate to analyze impacts of mining and combusting coal in the EIS, however, it would be equally appropriate to analyze the environmental impacts associated with the

[16] USDA at http://www.ers.usda.gov/data-products/fertilizer-importsexports/standard-tables.aspx.

[17] Energy Information Administration at http://www.eia.gov/cfapps/ipdbproject/iedindex3.cfm?tid=1&pid=1&aid=4&cid=regions&syid=2000&eyid=2010&unit=TST and at http://www.eia.gov/todayinenergy/detail.cfm?id=6750

According to the National Mining Association, during the period 1985-2011, coal exports have been as high as 109 million short tons (in 1991), and as low as 39 million short tons (in 2002). In 2009, the U.S. exported only 59 million short tons, but then exported 107 million short tons in 2011. NMA, *U.S. Bituminous Coal Exports, 1985-2011* available at http://nma.org/index.php/coal-statistics/coal-exports

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production and consumption of agricultural commodities, potash and every other commodity that could conceivably be transported through the Terminal. Such an analysis would be difficult if not impossible to perform, highly speculative, and of no practical value in informing the permitting process for the Project.

The following discussion focuses on coal because people have urged the Co-Lead Agencies to address the potential impacts associated with coal mining and combustion in the EIS. The discussion demonstrates that the Terminal will not be the proximate cause of either coal mining or coal combustion. Although this discussion addresses coal in considerable detail, the same principles explain why the EIS should not contain a life-cycle analysis of any other commodity that might be shipped through the Terminal.

B. Coal Mining and Combustion

Several individuals and groups appear to believe that the NEPA/SEPA process for the Gateway Pacific Terminal Project should provide an opportunity to debate questions about the mining and combustion of coal. Although those may be legitimate topics of public policy debate, the EIS process is not the proper forum for that debate.

The EIS process is not intended to provide citizens a wide-ranging opportunity to express their views on all public policy issues. On the contrary, the Supreme Court has made clear that "[t]he political process, not NEPA, provides the appropriate forum in which to air policy disagreements." Metro. Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 777 (1983). The EIS process is intended to be used to analyze the environmental effects of a proposed project and its alternatives.

Major projects requiring NEPA review often implicate complex and controversial policy questions, but the Act is not intended to provide answers to these questions. See Sancho v. United States DOE, 578 F. Supp. 2d 1258, 1269 (D. Haw. 2008) (plaintiffs' objections to government participation in a particle accelerator project overseas raised a "complex debate" among scientists about the possible ramifications of the operation of the project, but "Congress did not enact NEPA for the purpose of allowing this debate to proceed in federal court.") Ultimately, NEPA is a procedural planning statute, not a mechanism for policy dispute resolution. See Sabine River Authority v. United States Dep't of Interior, 745 F. Supp. 388, 396 (E.D. Tex. 1990) (a water authority's objections to federal conservation easement on land where the authority intended to construct a reservoir was "more akin to a political dispute over policy choices than a legal dispute over compliance with the procedural requirements of NEPA").

The EIS is not intended to address every policy issue raised by the Project, but rather to address the Project's effects on the physical environment. The mining or combustion of

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coal is certainly not a direct effect of the Gateway Pacific Terminal Project. The question is whether the Project might indirectly result in an increase in coal mining or coal combustion. The following sections confirm that these activities are not indirect effects of the Project, and therefore, should not be addressed in the EIS.

1. Coal Mining

Although the proposed Project is expected to transfer significant quantities of Powder River Basin coal from trains to ships, the EIS need not and should not include an in-depth evaluation of the environmental impacts associated with coal mining. First, the Project will not cause an increase in coal mining. Second, the impacts associated with mining in the Powder River Basin have already been considered in NEPA documents prepared in connection with mining leases.

a. The Gateway Pacific Terminal will not Cause an Increase in Coal Mining in the Powder River Basin.

The Gateway Pacific Terminal will not cause an increase in coal mining in the Powder River Basin. There will continue to be strong incentives to mine coal reserves whether or not the Gateway Pacific Terminal Project goes forward. The U.S. Energy Information Agency (EIA) estimates that domestic coal production will increase at an average rate of 0.3 percent per year, from 1,084 million short tons in 2010 to 1,188 million short tons in 2035. Western mines account for nearly all of this projected increase in production.[18] In 2011, Wyoming produced 438 million tons of coal, or almost 40% of the coal mined in the United States.[19] Powder River Basin coal is now used in 38 states. The largest market is Texas, which consumed over 64 million tons in 2008. Illinois is the next largest market at 54 million tons, and Missouri is third at 42.6 million tons.[20]

Coal remains the largest source of electricity generation in the United States. There are more than 1,400 coal-fired electricity generating units in operation at more than 600 plants across the country. These power plants generate over 40% of the electricity produced in

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[18] EIA, Annual Energy Outlook 2012, Early Release Overview, at 9 (Jan. 2012), available at http://www.eia.gov/forecasts/aeo/er/pdf/0383er(2012).pdf.

[19] EIA, What is the role of coal in the United States? (July 2012), available at http://www.eia.gov/energy_in_brief/article/role_coal_us.cfm.

[20] Timothy J. Considine, *Powder River Basin Coal: Powering America*, Final Report to the Wyoming Mining Association, at 19 (Dec. 2009), available at http://www.wma-minelife.com/coal/Powder_River_Basin_Coal/PRB_Coal.htm

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the United States and consume more than 900 million short tons of coal per year.[21] Construction permits have been issued for at least fifteen more coal-fired power plants in the U.S.[22] EPA predicts 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-fired power plants in the future.[23] Indeed, 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 increase throughout this period.[24]

There are many ways that Powder River Basin coal can get to market. Trains deliver coal to markets throughout the United States. Numerous existing and proposed port facilities in the United States and Canada can be used to export Powder River Basin coal. There are already more than a dozen U.S. ports with coal loading capacity totaling at least 160 million short tons per year, and in 2011, Reuters reported that terminal or expansion projects had been proposed with a total capacity of more than 125 million tons.[25]

For this reason, construction of the Gateway Pacific Terminal Project cannot be considered the proximate cause of coal mining in the Powder River Basin. See Sierra Club v. Clinton, 746 F. Supp. 2d 1025, 1045-46 (D. Minn. 2010) (proposed pipeline is not the proximate cause of oil sands production in Canada because oil sands can be transported in other ways).

b. Mining Impacts Have Been Thoroughly Evaluated In Other Documents.

An EIS need not address the indirect effects that have already been thoroughly analyzed in other environmental documents. At most, the Co-Lead Agencies need only adopt portions of prior NEPA documents by reference if they conclude that the effects considered in those documents are relevant to a new project. See 40 C.F.R. § 1506.3-4; WAC 197-11-600(4), -630.

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[21] EIA, What is the role of coal in the United States? (July 2012), available at http://www.eia.gov/energy_in_brief/article/role_coal_us.cfm.

[22] EPA, Proposed Rule: Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, at 16, 44, 154-57 (pre-publication version) (Mar. 27, 2012), available at http://epa.gov/carbonpollutionstandard/pdfs/20120327proposal.pdf.

[23] Id. at 39.

[24] EIA, Annual Energy Outlook 2012, at 87, 98 (June 2012), available at http://www.eia.gov/forecasts/archive/aeo12/pdf/0383(2012).pdf.

[25] Reuters, *FACTBOX – Proposed, existing capacity for U.S. coal exports* (June 9, 2011), available at http://www.reuters.com/article/2011/06/09/usa-coal-exports-idUSN0915182220110609.

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Mining in the Powder River Basin requires a variety of federal permits and approvals, including federal leases that trigger environmental analysis under NEPA. It makes much more sense to evaluate the environmental impacts of mining operations when leases are granted than it does to consider them in the context of a particular export terminal project.

The environmental impacts associated with mining in the Powder River Basin have been considered extensively by the Bureau of Land Management (BLM). BLM has completed a regional technical study called the Powder River Basin Coal Review to help evaluate the cumulative impacts of coal and other mineral development in the Powder River Basin.[26] The study considers an "upper coal production scenario" that includes a projected 576 million tons per year of production by 2020, and considers the total acres of disturbance, the total CO_2 emissions assuming all of the coal produced is burned, and other potential environmental impacts.

BLM refers back to this study in mine-specific EISs completed in the region. The Powder River Basin Coal Review and the particular mining lease EIS documents address both the local impacts of coal production and the global impacts of coal combustion.

2. Coal Combustion in Asia

Although the Gateway Pacific Terminal is expected to load significant quantities of coal onto ships bound for Asia, the EIS need not and should not include an in-depth evaluation of the environmental impacts associated with that coal ultimately being combusted in Asia. First, and most importantly, the Project will not be the proximate cause of an increase in coal combustion. Second, other NEPA environmental documents have already addressed the impacts associated with burning Powder River Basin coal. Third, the Co-Lead Agencies need not analyze indirect effects in foreign countries that are beyond their jurisdiction to control.

a. The Gateway Pacific Terminal Project will not Cause an Increase in Coal Combustion.

As discussed above, an EIS should only address indirect effects that are the proximate result of the proposed Project. U.S. Dep't of Transp. v. Public Citizen, 541 U.S. at 767. In particular, the Washington Department of Ecology has advised that an EIS need only

[26] See BLM, Powder River Basin Coal Review, available at http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/prbdocs.html.

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consider greenhouse gas emissions that are "proximately caused" by the project.[27] In this case, there are several reasons why the Gateway Pacific Terminal will not cause an increase in coal combustion.

First, coal will be exported from the United States to Asia regardless of whether the Gateway Pacific Terminal Project is built. Coal is currently being exported from more than a dozen ports in the United States.[28] In 2011, the United States exported more than 107 million tons of coal.[29] Several new export terminal and terminal expansions have been proposed along the East, West and Gulf Coasts, which would allow additional exports.[30] The following table shows current and proposed export capacity at other terminals along the West Coast:

[27] WDOE, Guidance for Ecology Including Greenhouse Gas Emissions in SEPA Reviews, at 3 (June 3, 2011), available at http://www.ecy.wa.gov/climatechange/docs/sepa/20110603_SEPA_GHGinternal guidance.pdf.

[28] Reuters, *FACTBOX – Proposed, existing capacity for U.S. coal exports* (June 9, 2011), available at http://www.reuters.com/article/2011/06/09/usa-coal-exports-idUSN0915182220110609.

[29] EIA, Quarterly Coal Report 2011, Table 4 (Apr. 2012), available at http://www.eia.gov/coal/production/quarterly/.

[30] EIA, International Energy Outlook 2011, at 78-79, available at http://www.eia.gov/forecasts/ieo/pdf/0484(2011).pdf ; The Columbian, *U.S. Coal Exports Surge, Riding Demand Abroad* (Apr. 12, 2012), available at http://www.columbian.com/news/2012/apr/13/us-coal-exports-surge-riding-demand-abroad/

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Port/Project Name	Location (Status)	Coal Export Capacity
Prince Rupert Port	British Columbia (Active)	Planning to double current capacity to 24-30 mtpy[31]
Roberts Bank Superport	British Columbia (Active)	33 mmtpy[32]
Millenium Bulk Terminal	Washington (Proposed)	Up to 44 mmtpy[33]
Port of St. Helen's	Oregon (Proposed)	Up to 38 mmtpy approved[34]
Port of Morrow	Oregon (Proposed)	Up to 8 mmtpy[35]
Port of Coos Bay	Oregon (Proposed)	Up to 10 mmtpy[36]
Total		**Over 160 mmtpy**

Coal will be exported whether or not the Gateway Pacific Terminal Project goes forward. Indeed, the Energy Department forecasts that exports will increase significantly by 2035.[37]

Second, coal combustion in China and India will continue to increase whether or not the Gateway Pacific Terminal is built. According to the International Energy Association, "[t]he policy decisions carrying the most weight for the [future] global coal balance will be taken in Beijing and New Delhi."[38] 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

[31] Platts, *British Columbia export terminal can more than double capacity: official* (Sept. 19, 2011), available at http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Coal/6494157

[32] Westshore Terminals, Background, available at http://www.westshore.com/background.html

[33] The Oregonian, *Longview proposed coal export terminal to have joint environmental review* (Oct. 9, 2012), available at http://www.oregonlive.com/environment/index.ssf/2012/10/longview_coal_export_terminal.html

[34] The Oregonian, *Port of St. Helens approves coal export agreements with two companies* (Jan. 26, 2012), available at http://www.oregonlive.com/environment/index.ssf/2012/01/port_of_st_helens_approves_coa.html

[35] The Morrow Pacific Project, available at http://morrowpacific.com/the-project.

[36] The Coos Bay World, *Port enters negotiations with coal shipper* (Oct. 21 2011), available at http://theworldlink.com/news/local/port-enters-negotiations-with-coal-shipper/article_e68fcd72-fc0b-11e0-affa-001cc4c002e0.html

[37] EIA, International Energy Outlook 2001, at 78 (Sept. 2011), available at http://www.eia.gov/forecasts/ieo/pdf/0484(2011).pdf

[38] IEA, World Energy Outlook 2012, Executive Summary, at 5 (Nov. 2012), available at http://iea.org/publications/freepublications/publication/English.pdf

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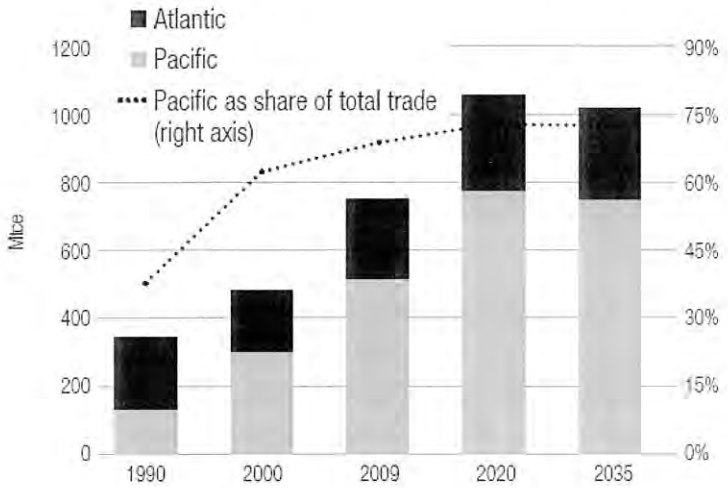
alone accounting for half of global energy growth through 2035.[39] By 2025, India is expected to overtake the United States as the world's second largest user of coal.[40]

World Inter-regional Hard Coal Net Trade[41]



Rapid industrialization and urbanization drive energy demand in China, and the country's natural resources endowment have made coal the primary fuel choice. Coal comprised 70 percent of China's 2006 total energy consumption. [42] Coal consumption in China roles to almost 4 billion short tons in 2011.[43] The burgeoning coal-to-liquids industry in China may also add an additional 450 million metric tons of demand by 2025.[44] Several major studies conducted within the last ten years all lead to the conclusion that China's coal

[39] EIA, International Energy Outlook 2011, at 79, available at http://www.eia.gov/forecasts/ieo/pdf/0484(2011).pdf

[40] IEA, World Energy Outlook 2012, Executive Summary, at 5 (Nov. 2012), available at http://iea.org/publications/freepublications/publication/English.pdf

[41] IEA, World Energy Outlook 2011, as presented in World Resources Institute, *Working Paper: Global Coal Risk Assessment*, at 12 (November 2012), available at http://pdf.wri.org/global_coal_risk_assessment.pdf

[42] Nathaniel Aden et. al, *China's Coal: Demand, Constraints, and Externalities*, Ernest Orlando Lawrence Berkeley National Laboratory, at 14 (July 2009), available at http://www.circleofblue.org/waternews/wp-content/uploads/2011/02/coal_bohai_report.pdf

[43] EIA, China available at http://www.eia.gov/countries/cab.cfm?fips=CH

[44] Nathaniel Aden et. al, *China's Coal: Demand, Constraints, and Externalities*, Ernest Orlando Lawrence Berkeley National Laboratory, at 27 (July 2009), available at http://www.circleofblue.org/waternews/wp-content/uploads/2011/02/coal_bohai_report.pdf

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consumption will increase significantly in the coming decades.[45] A recent analysis by Wood Mackenzie indicates that Chinese coal import demand could reach one billion metric tons by 2030.[46]

India is also expected to burn increasing amounts of coal.[47] Even if India is able to satisfy sixty percent of its coal demand from domestic production, it will need to import an additional 106 million tons by 2015.[48] The Wood Mackenzie analysis indicates that India's imports could exceed 400 million metric tons by 2030.[49]

Finally, Japan, already the world's leading importer of coal, is likely to increase its reliance on coal in light of the country's increasing opposition to nuclear power in the wake of the Fukushima accident.[50]

Asian coal demand will increase regardless of whether the United States exports coal. Indeed, Asia has extraordinary coal resources of its own. China is the world's largest coal producer, producing almost 3.5 billion tons in 2011.[51] Because of its large domestic supplies, China is not dependent on imports. Rather, China imports heavily when the price is right and relies largely on domestic coal when the price of imports is not attractive. If imports were unavailable or more expensive, China would simply burn its own domestic supply.[52] India also produces large quantities of coal and has extensive reserves.[53]

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[45] Guodong Sun, *Coal in China: Resources, Uses, and Advanced Coal Technologies*, Pew Center on Global Climate Change, at 7 (Mar. 2010), available at http://www.c2es.org/docUploads/coal-in-china-resources-uses-technologies.pdf.

[46] Wood Mackenzie, *Coal Market Service: Thermal Trade*, Executive Summary, at 3 (Dec. 2011).

[47] EIA, International Energy Outlook 2011, at 72, available at http://www.eia.gov/forecasts/ieo/pdf/0484(2011).pdf

[48] Platts International Coal Report, *India: Changing the World Coal Market*, at 21 (Nov. 2010), available at http://www.platts.com/IM.Platts.Content%5Caboutplatts%5Cmediacenter%5Cindiacoalinsight.pdf

[49] Wood Mackenzie, *Coal Market Service: Thermal Trade*, Executive Summary, at 3 (Dec. 2011).

[50] World Resources Institute, *Working Paper: Global Coal Risk Assessment*, at 12 (Nov. 2012), available at http://pdf.wri.org/global_coal_risk_assessment.pdf

[51] World Coal Association, *Coal Facts 2012*, available at http://www.worldcoal.org/resources/coal-statistics/

[52] 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, at 20 (Aug. 2010), available at http://iis-db.stanford.edu/pubs/22966/WP_94_Morse_He_Greatest_Coal_Arbitrage_5Aug2010.pdf

[53] EIA, International Energy Outlook 2011, at 73, available at http://www.eia.gov/forecasts/ieo/pdf/0484(2011).pdf.

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In addition, China, India and Japan are able to import coal from several countries other than the United States. According to the World Coal Association, in 2011, Indonesia, Australia and South Africa exported 309 million tons, 144 million tons, and 72 million tons of coal, respectively, in 2011.[54] Australia and Indonesia are expected to have the capacity to export 450 million tons by 2014-15, and coal exports from South Africa are also expected to increase.[55]

The EIA has described the United States as a marginal coal supplier over the long term, "responding to short-term disruptions or spikes in demand rather than significantly expanding its market share of world coal trade."[56] Over time, the western United States is expected to become one of several new marginal suppliers to Asia, but this new marginal seaborne supply is only expected to complement existing coal production in Indonesia and Australia.[57]

For these reasons, the Gateway Pacific Terminal will not cause an increase in global coal consumption and associated environmental impacts. Given the other significant sources of coal available to Asian markets, exports transported through the Gateway Pacific Terminal are not the proximate cause of coal combustion in Asia and need not be considered in the EIS. See Sierra Club v. Clinton, 746 F. Supp. 2d 1025, 1046 (D. Minn. 2010) ("there has been no showing that it is reasonably foreseeable that the oil being transported through the AC Pipeline will increase overall oil consumption in the United States").

Nonetheless, some have argued that U.S. coal exports will lower the price of coal in Asia and increase demand as a result. This argument has been made in an unpublished article written by University of Montana professor Thomas Power. There are several problems with Professor Power's argument.

First, Professor Power does not provide any support for a critical link in his argument. He cites two studies for the proposition that a long-term, 10 percent change in energy prices can lead to changes in energy use.[58] However, he does not show that coal exports from

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[54] World Coal Assoc., *Coal Facts 2012*, available at http://www.worldcoal.org/resources/coal-statistics/

[55] See ABARES, Australian Commodities, vol. 17 n. 1, 156-158 (Mar. 2010), available at http://adl.brs.gov.au/data/warehouse/pe_abare99014401/ac10_Mar_a.pdf

[56] EIA, International Energy Outlook 2011, at 79, available at http://www.eia.gov/forecasts/ieo/pdf/0484(2011).pdf; EIA, International Energy Outlook 2010, at 72, available at http://www.eia.gov/forecasts/archive/ieo10/pdf/0484(2010).pdf

[57] Wood Mackenzie, Coal Market Service: Thermal Trade, Executive Summary, at 1 (Dec. 2011).

[58] See Thomas Power, "The Greenhouse Gas Impact of Exporting Coal from the West Coast,"(unpublished), at 7-8, available at http://www.sightline.org/wp-content/uploads/downloads/2012/02/Coal-Power-White-

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the United States would cause a long-term 10 percent change in coal prices in Asia, much less that exports from any particular terminal project would cause a change in coal prices.

Second, the economic evidence is clear that the amount of coal expected to be shipped through the Gateway Pacific Terminal would not be nearly enough to affect prices in Asia. Asian coal consumption alone reached 5 billion tons in 2010.[59] The maximum export capacity of the Gateway Pacific Terminal at full build-out would be 48 million tons, which is less than one percent of the amount of coal currently consumed in Asian.

Chinese coal imports could reach one billion metric tons by 2030, and India's imports will be at least 400 million metric tons in that same year.[60] Even if the maximum amount of coal shipped through the Gateway Pacific Terminal all went to Asia in 2030, those exports would constitute only 3 percent of Chinese and Indian imports.

Third, the price of coal does not significant affect the amount of coal consumed in China, although (as explained above) it may affect the source of coal being consumed. Market signals appear to have had little effect on Chinese energy use and related investment. Chinese energy prices are regulated and do not reflect underlying market scarcities."[61] One observer explained that the Chinese energy regulatory system is characterized by "price signals that have negligible effect on consumer behavior and investment."[62] Any effect U.S. exports might have on Chinese coal prices, would be short-lived and short-term price changes do not impact energy demand because of the expense and effort involved with modifying or replacing in-place energy technology to respond to price increases for a particular fuel.[63]

Paper.pdf , citing Robert S. Pindyck, The Structure of World Energy Demand (1979), and Jiao, J-L, Fan, Y. and Wei, Y-M, "The structural break and elasticity of coal demand in China: empirical findings from 1980-2006," Int'l Journal of Global Energy Issues, at 31 (2009).

[59] EIA, International Energy Statistics (2011), available at http://www.eia.gov/cfapps/ipdbproject/IEDIndex3.cfm?tid=1&pid=1&aid=2.

[60] The European, *China, India 2030 coal imports may hit 1.4 billion tonnes* (Mar. 14, 2012), available at http://www.the-european.eu/story-340/china-india-2030-coal-imports-may-hit-1-4-billion-tonnes.html.

[61] F. Gerard Adams and Yochanan Schachmurove, "Modeling and forecasting energy consumption in China: Implications for Chinese energy demand and imports in 2020," Energy Economics, at 1265-66 (2008).

[62] Angie Austin, "Energy and Power in China: Domestic Regulation and Foreign Policy," Foreign Policy Centre, at xiii (2005), available at http://fpc.org.uk/fsblob/448.pdf

[63] See Robert S. Pindyck, The Structure of World Energy Demand at 3 (1979); Jiao, J-L, Fan, Y. and Wei, Y-M, "The structural break and elasticity of coal demand in China: empirical findings from 1980-2006," 31 Int'l Journal of Global Energy Issues 342 (2009).

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In this context, it is extremely unlikely that U.S. coal exports through the Gateway Pacific Terminal would have any effect on the price of coal in Asia. CEQ guidance acknowledges that the courts have adopted a "rule of reason" to judge an agency's actions with respect to the analysis of transboundary effects.[64] Agencies are not required to discuss remote and highly speculative consequences. Sierra Club, 976 F.2d at 767; Trout Unlimited, 509 F.2d at 1283. Any assessment of the potential indirect or cumulative effects of the Terminal on coal demand would be highly speculative given the wide-range of factors affecting the international coal market.

b. The effects associated with burning Powder River Basin Coal have already been evaluated in other NEPA documents.

As explained above, the BLM has prepared NEPA documents in connection with Powder River Basin coal leases that have analyzed the potential environmental effects associated with that coal being burned to generate electricity. Among other things, those documents include an in-depth discussion of the associated greenhouse gas emissions.[65] Significantly, in these documents, BLM has already acknowledged the potential for Powder River Basin coal to be sold outside the United States.[66] BLM concluded that it is unlikely that the pending coal lease applications would affect greenhouse gas 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 Powder River Basin mines] would complete recovery of their existing leases."[67]

To the extent that the Co-Lead Agencies for the Gateway Pacific Terminal EIS conclude that these unlikely, remote, indirect effects should be addressed, they should simply adopt those other environmental documents by reference. See 40 C.F.R. 21 1506.3-4; WAC 197-11-600(4), -630.

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[64] 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), available at http://www.ntc.blm.gov/krc/uploads/425/ApxS_CEQ-Guidance_TransboundaryImpacts.pdf

[65] See, e.g., Final EIS, Wright Area Coal Lease Applications, Vol. 1 at 3-323 to 3-327 and 4-129 (2009), available at http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/hpdo/Wright-Coal/feis.Par.33083.File.dat/01WrightCoalVol1.pdf

[66] Id. at 4- 137.

[67] Id.at 4-141.

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c. The Co-Lead Agencies need not Address Impacts Beyond Their Jurisdiction to Control.

"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." DOT v. Public Citizen, 541 U.S. 752, 770 (2004). The Co-Lead Agencies have no authority to prevent coal consumption in Asia and, therefore, the EIS should not address the associated environmental impacts.

C. The Production and Consumption of Other Bulk Commodities

Although some parties have argued that the EIS should consider the environmental impacts of mining and consuming coal that may be shipped through the Gateway Pacific Terminal, the same reasoning could be used to suggest that the EIS should consider the environmental impacts associated producing and consuming any other bulk commodity that might be shipped through the Terminal. Two such commodities are calcined petroleum coke and grain. However, construction and operation of the Gateway Pacific Terminal would not cause an increase in the production or consumption of those or any other commodities shipped through the terminal.

Approximately 23 percent of worldwide petroleum coke production, excluding China, is earmarked for calcined petroleum coke.[68] Calcined petroleum coke is used to make anodes for the smelting industry, with the aluminum industry consuming 85% of the world's calcined coke. Annual worldwide production capacity for calcined coke is currently approximately 24 million tons.[69] China produces about 50% of the world's supply. BP produces 800,000 tons per year, the only calcined petroleum coke produced in Washington State. Some of this calcined coke might be exported through the Gateway Pacific Terminal, but there is no reason to believe that exports of at most three percent of the world's supply would cause any increase in the production or consumption of calcined coke.

Grains may also be shipped through the Gateway Pacific Terminal. In 2011, approximately 385 million metric tons of grain (corn, sorghum, barley, oats, wheat, rye and rice) were produced in the U.S., and approximately 73 million tons were exported.[70] At full build-out, the Gateway Pacific Terminal will have capacity to export 6 million tons of grain per year.

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[68] See http://www.oxbow.com/ContentPageSSL.asp?FN=ProductsCalcinedPetroleumCoke

[69] Rain CII Heat Recovery Project for Power Production (08/17/2011), *available at* http://www.raincii.com/news/

[70] USDA, Agricultural Statistics at I-1 (2011).

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There is no reason to believe that this small amount of export capacity would change the amount of grain produced in the United States or consumed abroad.

D. Vessel Traffic

Vessel traffic is not a direct effect of the Gateway Pacific Terminal Project, but vessel traffic to and from the Terminal will be an indirect effect. The EIS should consider the impacts associated with vessel traffic, but the question is where to draw the geographic line when it comes to vessel traffic. The EIS must be bounded by the rule of reason. It is certainly foreseeable that vessels will be arriving at and departing from the proposed wharf. These vessels must enter Puget Sound at Cape Flattery, travel along the Strait of Juan de Fuca to Port Angeles, and then either travel through Haro Strait or Rosario Pass. It is reasonable, therefore, that the EIS consider the environmental impacts associated with vessels traveling those routes. The vessel impact study that is currently under way should provide useful information for the EIS.

Before vessels reach Cape Flattery and after they depart Puget Sound, it is impossible to predict with any degree of certainty where they will travel. The vessels could be bound for any number of other domestic or foreign ports, and could travel any number of routes to get there. Environmental impacts associated with that travel are too highly speculative to be addressed in this EIS. Trout Unlimited, 509 F.2d at 1283.

V. Cumulative Impacts

Both NEPA and SEPA require consideration of cumulative impacts. 40 C.F.R. § 1508.7; WAC 197-11-792(2)(c)(iii). A cumulative impact is "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." 40 C.F.R. § 1508.7.

For each of the areas of direct effects addressed in the EIS, the EIS preparers will have to consider whether there are significant cumulative impacts that also warrant detailed analysis. The scope of cumulative impact analysis will necessarily depend upon the geographic area in which significant cumulative impacts are reasonably likely and foreseeable. CEQ guidelines emphasize that the purpose of the scoping process is to "narrow the focus of the cumulative effects analysis to important issues of national, regional, or local significance." CEQ, Considering Cumulative Effects Under the National Environmental Policy Act 12 (Jan. 1997).

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EPA has explained that the geographic boundaries of the cumulative impact analysis depend upon "the characteristics of the natural resources affected, the magnitude and scale of the project's impacts, and the environmental setting." See EPA, Consideration of Cumulative Impacts in EPA Review of NEPA Documents 10 (May 1999). "[T]he geographical boundaries should not be extended to the point that the analysis becomes unwieldy and useless for decision-making." Id. at 9. The appropriate geographic scope will be different for different resources and elements of the environment. CEQ, Considering Cumulative Effects at 15.

A couple of examples illustrate this point. The first example is air quality. In analyzing impacts to air quality, it is reasonable to consider whether significant cumulative impacts of the emissions associated with the proposed action, emissions from existing sources and emissions from any foreseeable new sources, but only in the geographic area in which models predict foreseeable significant impacts. The second example is wetlands. The geographic scope of the cumulative impact analysis may be much smaller when considering wetland impacts because wetland functions are generally confined to a particular watershed.

There are currently several proposals to construct new export terminals or expand existing terminals in the Pacific Northwest. Some have suggested that a NEPA cumulative impact analysis consider the potential cumulative effects of all of these proposals. We urge caution in doing so for a couple of reasons.

It is unlikely that all of these projects will go forward simultaneously. Although some of these proposals have advanced to the point of beginning the permitting process, others have not and may never. It would require significant speculation to analyze the potential effects of potential projects that have not been clearly defined in permit applications.

Even if two or more terminal projects were constructed in the Pacific Northwest, they would not be likely to have significant cumulative impacts. Cumulative impacts arise when projects share environmental resources within a defined geographic area, such as a single watershed or airshed. In this case, the proposed projects are in two different states, in locations that are as much as 500 miles apart. They are proposed to be located in and near different communities, airsheds, watersheds, and wildlife communities.

A more detailed discussion of the issues concerning programmatic EISs is found in the letter from William Lynn to Colonel Bruce Estok and Colonel John Eisenhauer dated May 25, 2012, a copy of which is attached for your information. See also Letter from Jo-Ellen Darcy, Assistant Secretary of the Army, to Representative David McKinley dated Nov. 29, 2012.

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VI. Alternatives

Both NEPA and SEPA require that an EIS consider potential alternatives to the proposed action and evaluate the potential environmental impacts of those alternatives. 42 U.S.C. 4332(2)(C)(iii); RCW 43.21C.030(2)(c)(iii). An important part of the scoping process is to identify the alternatives that warrant in-depth consideration in the EIS. Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1117 (9th Cir. 2002).

A. No Action Alternative

An EIS always considers the no-action alternative in addition to the proposed project. Doing so helps policymakers and the public to distinguish the significant environmental impacts that are likely to be caused by the proposed project from those environmental impacts that are likely to occur whether or not the project goes forward. This EIS should include a thorough discussion of the no-action alternative.

B. Alternative Locations

In addition to the no action alternative, the EIS could consider other project alternatives. However, these alternatives must satisfy the applicant's purpose for the project. Native Ecosystems Council v. U.S. Forest Service, 428 F.3d 1233, 1247 (9th Cir. 2005); City of Shoreacres v. Waterworth, 420 F.3d 440, 450-51 (5th Cir. 2005). Indeed, under SEPA, when an applicant is a private party, as it is in this case, the EIS need not consider any offsite alternatives." Weyerhaeuser v. Pierce County, 873 P.2d 498, 505 (Wash. 1994).

The purpose of the proposed Gateway Pacific Terminal Project is:

> To develop and successfully operate a multimodal marine terminal, including a deep-draft wharf with access trestle and other associated upland facilities, for export and import of multiple dry bulk commodities ("multimodal deep-water bulk terminal") within the Cherry Point Industrial Urban Growth Area to meet international and domestic demand. [71]

The Project responds to three principal needs, each of which provides a basis for the proposed project:

1. The need to ship bulk cargo to and from Asia and other markets to meet current and future market demand;

[71] Pacific International Terminals, Inc., Revised Project Information Document, at 3-1(March 2012)

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2. The need for deep-water, bulk marine terminals in the Puget Sound region; and
3. The need for community and economic development in Whatcom County consistent with the Whatcom County Comprehensive Plan for the Cherry Point Industrial UGA.[72]

To meet these needs, Pacific International Terminals requires a property that:

- Is located in the Pacific Northwest Region of the United States;
- Is of sufficient size to effectively accommodate the handling and storage of large quantities of dry bulk commodities;
- Is appropriately designated and zoned for use as a marine terminal;
- Can support a deep-water marine terminal and wharf;
- Has proximity and access to rail of sufficient length, configuration, and capacity to support the proposed terminal;
- Has proximity and access to major roads; and
- Has a sufficient supply of industrial water and energy.

The importance of deep water cannot be overstated. To ensure success, Pacific International Terminals needs to develop the Project in a manner that responds to existing and future market demands and economic development opportunities.

As the term implies, dry bulk commodities are voluminous, dry materials. They are shipped in bulk rather than as containerized cargo. Bulk commodities are transported in large ships with deep drafts because doing so is much more efficient and has a lower cost per ton than using smaller vessels. Using larger vessels also reduces traffic in ports and on constrained waterways.

The size of the bulk carrier fleet has grown steadily from an average of approximately 43,500 dry weight tons (dwt) in 1990 to an average of 64,400 dwt in 2012.[73] This increase reflects the deployment of Capesize vessels into the international bulk carrier fleet. These vessels are over 80,000 dwt, and in the past five years, more than 620 Capesize carriers over 150,000 dwt have been delivered.[74] Capesize vessels are up to 1,066 feet long with a

[72] Id. at 3-1

[73] Institute of Shipping Economics and Logistics, *Shipping Statistics and Market Review*, Vol. 56, No. 4, 6 (2012).

[74] Id. at 6.

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draft of up to 65 feet. Only large, deep-water terminals are capable of receiving these vessels.

On the West Coast, Prince Rupert, Vancouver, DeltaPort, Cherry Point, Seattle, Tacoma, and Los Angeles/Long Beach are the only locations where navigation channels have sufficiently deep drafts to accommodate Capesize vessels.[75] Of the three U.S. locations in the Pacific Northwest, Seattle and Tacoma are already developed as ports. The Cherry Point Industrial Urban Growth Area is the only remaining location with the natural physical attributes to accommodate deep-draft vessels. Developing a port at another location would require significant dredging, with all of the associated environmental impacts.

Cherry Point has the following key advantages as a location for development of a dry bulk terminal:

- It has a natural deep-water, nearshore marine location that does not require dredging for development or maintenance of a deep-water wharf.
- Cherry Point's natural deep water enables the proposed wharf to accommodate up to 80-foot average draft vessels, including the largest oceangoing dry bulk cargo vessels, known as Capesize and Panamax vessels.
- It is a naturally protected inland marine water body.
- It has adequate available land zoned as Heavy Impact Industrial and a shoreline designation that supports water-dependent industrial use.
- It has adequate industrial water supply capacity and electrical infrastructure.
- It has easy access to Interstate 5.
- It has a ready connection to a Class 1 railroad (BNSF).
- It has a large, mainly flat area for short-term storage, transfer, and handling of commodities.
- It has sufficient upland area to process a train approximately 8,500 feet long without interfering with mainline rail traffic

An alternative location outside of the Pacific Northwest would clearly not satisfy the purpose or need for the proposed Project. To the extent that EIS preparers consider alternative locations for the bulk dry commodity export facility within the Pacific Northwest, the EIS preparers must consider whether these alternative locations present a commercially feasible alternative to the proposed location, as well as whether they would present an environmentally advantageous location.

[75] Ausenco Sandwell, Pacific International Terminals: Gateway Coal Study Port Site Selection Overview (April 30, 2010).

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As explained above, the EIS should not include alternatives that would not meet the Project's objectives. Likewise, the EIS should not include in-depth discussions of alternatives that are remote or speculative. Laguna Greenbelt, Inc. v. U.S. Dept. of Transp., 42 F.3d 517, 525 (9th Cir. 1994); Gebbers v. Okanogan County Public Util. Dist. No. 1, 183 P.3d 324, 328 (Wash. App.), rev. denied, (Wash. 2008).

C. Alternative Terminal Size and Configurations

The size of Panamax and Capesize vessels used increasingly in the transport of dry bulk commodities also has implications for the size of a terminal. A terminal must have sufficient land area, rail capacity, and ancillary infrastructure to marshal large quantities of bulk cargo quickly to or from a vessel.

Inside the site, there needs to be sufficient rail track to stage one full unit train leading into a rail car dumper with sufficient space at the exit end of the dumper for one unit train of empty cars. In addition, track is needed to allow for the storage of one full unit train with locomotives on site, while another is being dumped.

A large area is also needed to stockpile bulk materials for loading. The stockpile capacity required is proportional to annual throughput, since sufficient storage space must be available to handle cargo unloaded from trains and loaded into vessels efficiently.

Pacific International Terminals has worked with engineers to design the Project in a way that meets these objectives while at the same time minimizing unnecessary development. The EIS should not consider alternative configurations that would not meet these objectives.

D. Alternative Wharf Configurations

Pacific International Terminal proposes to build a 2,980 foot wharf with access provided by a 1,100-foot-long, 50-foot-wide access trestle. The Shoreline Substantial Development Permit issued in 1997 by Whatcom County authorized the design and configuration for the wharf and trestle now being proposed. The EIS could consider alternative locations for the wharf, if such alternatives are environmentally preferable.

VI. Conclusion

Pacific International Terminals thanks the Co-Lead Agencies for this opportunity to provide comments concerning the appropriate scope of the Gateway Pacific Terminal EIS and remains willing to assist the Co-Lead Agencies in developing the required environmental documents. Pacific International Terminals urges the Co-Lead Agencies to produce a

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document that provides a reasonably thorough discussion of significant environmental impacts that would be probable and proximately caused by the Project. The Co-Lead Agencies should use this scoping process as intended, to eliminate insignificant and improbable impacts from further consideration, so that the EIS can focus attention on those impacts that are probable and significant.

Sincerely,

Bob Watters
Senior Vice President, Business Development

Attachment:

May 25, 2012 Letter from William Lynn to Colonel Bruce Estok and Colonel John Eisenhauer

GORDON THOMAS HONEYWELL

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May 25, 2012

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Re: Bulk Export Terminal Projects

Dear Colonel Estok and Colonel Eisenhauer:

We are writing on behalf of Pacific International Terminals, Inc., the applicant for the Gateway Pacific Terminal project at Cherry Point in Whatcom County, Washington. We understand that some stakeholders have requested that the U.S. Army Corps of Engineers prepare a programmatic or regional EIS to comprehensively evaluate all bulk commodity export terminals that have been or may in the future be proposed in the Pacific Northwest.[1] A programmatic or regional EIS is neither required nor appropriate in this instance. Instead, to the extent that foreseeable projects may have cumulative effects on the environment, NEPA already provides for the evaluation of any clearly identifiable cumulative effects in project-specific NEPA documents.

The recent calls for a programmatic or regional EIS are a transparent attempt to try to kill the proposed export terminal projects by introducing an additional layer of environmental review that would unnecessarily delay the permitting process. NEPA was intended to provide decision makers with useful information about the environmental consequences of

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[1] We understand that six such projects have been identified but not all have reached the stage where a commitment has been made to initiate the permitting process: the Gateway Pacific Terminal at Cherry Point in Whatcom County, Washington, the Millennium Bulk Terminal's project in Longview, Washington, the RailAmerica proposal in Grays Harbor, Washington, the Ambre Energy proposal involving Port of Morrow and Port of St. Helens in Oregon, the Kinder Morgan proposal at Port of St Helens, Oregon, and a possible terminal at Coos Bay, Oregon.

their decisions; it was never intended to be used to prevent projects by creating protracted delays. The call for a programmatic or regional EIS is simply the latest tactic in the campaign of groups and individuals who have declared "war on coal." Although these groups have a right to engage in public policy debate about coal, this is not the proper forum for that debate. Courts have repeatedly held that the EIS process should not be used as a vehicle for engaging in fundamental policy debates. Metro. Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 777 (1983); Churchill County v. Norton, 276 F.3d 1060, 1079 (9th Cir. 2001), as amended, 282 F.3d 1055 (9th Cir.), cert. denied, 537 U.S. 822 (2002); Foundation on Economic Trends v. Lyng, 817 F.2d 882, 886 (D.C. Cir. 1987).

The Corps should not attempt to prepare a programmatic or regional EIS to evaluate all of the export terminal projects currently proposed or still being formulated. Instead, the Corps should proceed with a project-specific EIS for each project as it reaches the permitting process, relying upon the well-developed body of law and agency procedures for evaluating potential cumulative impacts in project-specific EISs.

Programmatic EIS

Some stakeholders have suggested that the Corps prepare a programmatic EIS, which NEPA authorizes agencies to prepare in certain circumstances. 40 C.F.R. §§ 1502.4(b), 1508.18(b)(3). A programmatic EIS is appropriate when an agency is adopting "programs, such as a group of concerted actions to implement a specific policy" or "systematic and connected agency decisions allocating agency resources to implement a specific statutory program." Foundation of Economic Trends, 817 F.2d at 884 (quoting 40 C.F.R. § 1508.18(b)(3)).

The existence of a federal program is a prerequisite to preparing a programmatic EIS. Courts have explained that a programmatic EIS may be appropriate when the agency is adopting "a wide-ranging federal program," National Wildlife Fed'n v. Appalachian Regional Comm'n, 677 F.2d 883, 888 (D.C. Cir. 1981), or taking a series of "concerted actions" designed to "implement a specific policy or plan." Churchill County, 276 F.3d at 1074. Likewise, a programmatic EIS may be appropriate when an agency develops a plan that will govern future specific actions. E.g., City of Tenakee Springs v. Block, 778 F.2d 1402, 1407 (9th Cir. 1985) (requiring Forest Service to prepare programmatic EIS for land management plan); Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1215 (9th Cir. 1998) (requiring an EIS for timber sales that were part of a timber salvage project), cert. denied, 527 U.S. 1003 (1999).

In the current circumstance, however, the Corps has not proposed any program related to the development of export terminals in the Pacific Northwest. In the absence of any program, the Corps should follow its long established procedures for considering permit applications on a case-by-case basis when they are filed with the agency. Courts have

repeatedly held that a programmatic EIS is not appropriate when an agency makes a series of discrete, independent actions. Foundation of Economic Trends, 817 F.2d at 885. In particular, a programmatic EIS is not appropriate when an agency is making several independent decisions on separate applications submitted by private parties. Kleppe v. Sierra Club, 427 U.S. 390, 399-401 (1976). For example, the Ninth Circuit has held that the Bonneville Power Administration was not required to prepare a programmatic EIS for several power contracts because there was no record showing of a master plan for development of the region. Sierra Club v. Hodel, 544 F.2d 1036, 1041 (9th Cir. 1976).

Indeed, without a program or policy defined by the Corps, it would be impossible to define the key elements of the EIS such as the Purpose and Need, the Proposed Action, and the scope of a programmatic EIS. As the Supreme Court has explained, "[a]bsent an overall plan . . . it is impossible to predict the level of . . . activity that will occur . . . and thus impossible to analyze the environmental consequences and the resources commitments involved in and the alternatives to, such activity." Kleppe, 427 U.S. at 402.

Regional EIS

Even without a federal program, some stakeholders have asked that a single regional EIS be prepared for all of the Pacific Northwest bulk export terminal projects because they are "similar" and may have "cumulative effects." NEPA regulations allow an agency to prepare a single EIS for multiple similar actions with substantial cumulative impacts, if doing so would be the best way to analyze their impacts 40 C.F.R. § 1508.25(3). An agency, however, is never required to prepare a single EIS for multiple independent projects. See Earth Island Inst. v. U.S. Forest Service, 351 F.3d 1291, 1306 (9th Cir. 2003); Izaak Walton League of Am. v. Marsh, 655 F.2d 346, 374 n. 73 (D.C. Cir.), cert. denied, 454 U.S. 1092 (1981).

Just as a programmatic EIS is not appropriate, there are at least four reasons not to prepare a regional EIS for the bulk export terminal projects being proposed or contemplated in the Pacific Northwest. First, the projects are private projects that are entirely independent of one another and are sponsored by different companies. A single EIS is most often prepared when there is a close interrelationship between two or more projects. Compare Blue Mountain Biodiversity Project, 161 F.3d at 1214-15 (requiring a single EIS for five timber sales within the same watershed that were part of a comprehensive forest recovery strategy), with Izaak Walton League, 655 F.2d at 374 (concluding a single EIS was not required for various unrelated river projects that were not part of an overall plan). Here the various projects are not economically or functionally interrelated, connected or otherwise interdependent.

Second, the projects are not "similar" in most relevant respects. As far as it can be determined from the information currently available, the projects are far more different than similar. They vary in location, with some projects proposed in Washington and some in

Oregon, some in the Puget Sound and some on the Columbia River, some on private land and some on public land, some on industrial land and others on commercial or agricultural land. They vary in proposed capacity from 5 to 54 million tons per year in commodity throughput. They vary in modes for transport, with some projects served by rail and large Cape-size ocean-going vessels, and others served by river-going barges and smaller ocean-going vessels. They vary in the commodities to be handled, with some apparently handling only coal and others designed to handle a wide range of dry bulk commodities. They vary in proposed operational date from as early as 2015 to others with no announced timeline. As a result of these and other differences, the project proposals will have very different potential environmental consequences.

Third, despite the assertions of project opponents, the six projects do not have significant cumulative impacts. Cumulative impacts arise when projects share environmental resources within a defined geographic area such as a single watershed or airshed. In this case, the project sites are spread across two states, in locations that are as much as 500 miles apart. They are proposed to be located in and near different communities, airsheds, watersheds, and wildlife communities. There is no reason to believe these geographically distant projects would have so many cumulative impacts that they could only be addressed meaningfully in a single EIS. On the contrary, to the extent that any cumulative impacts exist, they can be effectively analyzed in project-specific NEPA documents. See Resources Limited, Inc. v. Robertson, 35 F.3d 1300, 1306 (9th Cir. 1993) (a single EIS is not required as long as cumulative impacts are properly considered in project-specific EISs).

Fourth, a single EIS would not be a practical. See Kleppe, 427 at 414. An agency should only prepare a single EIS for multiple private projects if doing so would be the best way to provide relevant information to decision makers. The fundamental question is whether "the best way to assess adequately the combined impacts of similar actions" is a single EIS. Nevada v. Dept. of Energy, 457 F.3d 78, 92 (D.C. Cir. 2006) (quoting 40 C.F.R. § 1508.25(a)). With the varying stages of project development, the significant differences among projects, the absence of substantial cumulative impacts, and the number federal, state and local agencies and districts involved, preparing a single regional EIS would be much less effective than preparing project-specific EISs that include a discussion of cumulative impacts.

In similar circumstances, courts have upheld agency decisions not to prepare a single EIS. For example, in Churchill County v. Norton, 276 F.3d 1060, 1074-79 (9th Cir. 2001), the Fish and Wildlife Service had declined to prepare a single EIS concerning multiple water supply projects, even though they were all taking place within a single drainage basin and had been authorized by the same legislation. The Ninth Circuit upheld the agency's conclusion that a single EIS was not appropriate because the projects were not sufficiently integrated or equally well defined. The Ninth Circuit agreed that any cumulative impacts

could be addressed in project-specific EISs. Similarly, in League of Wilderness Defenders-Blue Mountain Biodiversity Project v. Bosworth, 383 F. Supp. 2d 1285, 1298 (D. Or. 2005), the court upheld the Forest Service's decision not to prepare a single EIS for multiple logging projects when "the projects were proposed at various times, they proceeded on their own time schedules, the project boundaries do not overlap, and the effects of the other projects were discussed in the [project-specific] EIS." See also Earth Island Inst. v. U.S. Forest Service, 351 F.3d 1291, 1305 (9th Cir. 2003).

Conclusion

For these reasons, Pacific International Terminals strongly urges the Corps to reject the suggestion that it prepare a single programmatic or regional EIS addressing all of the bulk export terminals being contemplated in the Pacific Northwest. Preparing a single EIS would be a significant departure for the agency's historic practice, and is not necessary or appropriate to evaluate the potential cumulative impacts of the various proposals. Instead, the Corps should follow its usual practice of preparing a project-specific EIS for each project as it becomes ripe in the permitting process, and include in the project-specific EIS an appropriate cumulative impact analysis that evaluates all the truly cumulative effects. Doing so will provide decision makers with sufficient information about environmental impacts to make informed decisions within their scope of their jurisdiction.

Very truly yours,

William T. Lynn

WTL:kal

cc: The Honorable Christine O. Gregoire, Governor
Dennis McClerran, Regional Administrator, EPA Region X
Kate Kelly, EPA Region X Director of Ecosystems, Tribal and Public Affairs
Ted Sturdevant, Director Washington Department of Ecology
Muffy Walker, Branch Chief, U.S. Army Corps of Engineers
Don Brunell, Association of Washington Business
Eric Johnson, Executive Director, Washington Public Ports Association
Jeff Johnson, President, Washington State Labor Council, AFL-CIO
Peter Goldmark, Commissioner of Public Lands, Washington State DNR