



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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May 7, 2012

Colonel John Eisenhower
Commander, Portland District
U.S. Army Corps of Engineers
P.O. Box 2946
Portland, OR 972008-2946

RE: Public Notice for Permit Application, Coyote Island Terminals, LLC. U.S. Army Corps of Engineers No: NWP-2012-56

Dear Colonel Eisenhower:

Since your arrival to the Portland district, I have truly appreciated the partnership and opportunities for collaboration between the U.S. Army Corps of Engineers (Corps) and the Columbia River Inter-Tribal Fish Commission (CRITFC) in the region's efforts to restore salmon and protect our member tribes' treaty fishing rights. The purpose of this letter is to provide CRITFC's comments regarding three project proposals to construct coal export terminals in the Columbia River Basin that threaten the forward progression of these efforts. Specifically, this letter includes our formal comments for one of the projects; the permit application for the Morrow Pacific Project.

CRITFC files these comments on behalf of its member tribes¹ and are in addition to the comments filed by the Yakama Nation and the Confederated Tribes of the Umatilla Indian Reservation, which are hereby incorporated by reference. The CRITFC tribes are very concerned about the Morrow Pacific Project because it will directly and negatively intrude on the tribes' exercise of their treaty fishing rights. The sparse information we currently have raises more questions than answers; it would be premature for the Corps to approve this permit application at this time. There are many other processes that need to occur before any approval is granted, and CRITFC recommends that the Corps suspend action on this permit application at this time.

Since time immemorial, the culture and livelihood of the Columbia River Basin tribes have been closely tied with the river. In the last century of modern development, this connection has been repeatedly broken. In 1977, the tribes resolved to restore fish to the

¹The four member tribes are: the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Nez Perce Tribe, and the Confederated Tribes and Bands of the Yakama Nation. These tribes possess treaty rights to take fish that pass their usual and accustomed fishing places.

river and formed CRITFC to support and collaborate in their efforts to protect, promote, and enhance the anadromous fish resources consistent with their treaties. In the last decade, fish have been returning to the river in ever-increasing numbers and the tribes have been able to restore some of their traditional fisheries, but the balance is still fragile. Projects such as the Morrow Pacific Project will undoubtedly put more pressure on the fisheries and are a major step backward from the forward momentum of current efforts. If other projects proposed for the Columbia River, such as the “Longview Project” (proposed by Millennium Bulk Logistics) and the “St. Helens Project” (proposed by Kinder Morgan) are developed; the pressures on the Basin fish will be substantial. These projects will affect the tribes, and therefore, on behalf of our member tribes and in addition to the formal requests already made, CRITFC requests that the Corps to conduct formal government-to-government consultation on the effects of the Morrow Pacific Project as well as the effects of the other projects.

Environmental Justice and Public Interest

This project raises substantial environmental justice issues; the environmental and other costs will be significant, but the burden of the costs resulting from the projects will not be borne by those who will profit the most. The benefits of these proposals accrue to a only a few, that is, huge profits for large foreign and national coal companies coupled with the creation of few local jobs, whereas the larger burden and costs will be borne first by the tribal treaty fishers, their treaty fisheries, and all the small communities that line the Columbia River Gorge. The Treaty Tribes of the Columbia River Basin are tightly linked to the river, and throughout this century, they, and the salmon, have carried development on their backs. Over the past thirty years, the tribes have worked tirelessly to put fish back in the river with many successes. Approving the Morrow Pacific proposal – and any of the other coal export proposals – would be a significant step backwards for all those efforts.

The evaluation of a River & Harbors Act § 10 permit application must take into account the impacts to the public interest and will “reflect the national concern for both protection and utilization of important resources.” Furthermore, the agency must weigh any benefits from the proposal against reasonably foreseeable detriments. Below we have listed several reasonably foreseeable impacts to our tribes and to the environment from the Morrow Pacific Project. It is clear from this initial list that the public interest would not in any way be served by approving this proposal; not in the short term and definitely not in the long term. In order to discuss these issues on a broad scale and in a transparent, open process, we request that the Corps hold public hearings on this application.

Environmental Review

As the Corps proceeds to the environmental review step in this process, on behalf of the tribes, we encourage the agency to prescribe a broad scope of review of the Morrow Pacific Project to include cumulative effects of both the construction of the dock at Port of Morrow as well as its connecting port at Port Westward. The current documents,

including the applicant's Biological Assessment, do not include very much information on the extent of work needed at the Port Westward site. Port Westward is within the Lower Columbia River Estuary and is near some particularly sensitive critical habitat for several salmonid stocks, including several listed as threatened or endangered under the Endangered Species Act (ESA). Restoration of habitat in the estuary is a key component to many of the anadromous fish processes in the Basin overseen by the National Marine Fisheries Service, or NOAA Fisheries.

CRITFC strongly recommends that the Corps initiate a programmatic environmental review to broadly analyze the other projects in the Basin, i.e., the Longview and the St. Helens projects. While each of these proposals will present unique circumstances, in the aggregate they create similar issues that will have profound detrimental effects to the tribes, the communities and the environment of the Columbia River.

Project proposals within the Northwest region, such as those proposed for Cherry Point, Grays Harbor Washington, and Coos Bay, Oregon, will also have synergistic effects on the Columbia River from increased train traffic to climate change effects.

Regulatory Review

Coal creates a myriad of ill effects on the environment in its removal, transport, and consumption. Of these, the transport and eventual consumption of this coal will create lasting and long-term effects on the Columbia River. Coal's characteristics and values vary according to where it is mined. Coal that is expected to be transported through the Columbia River will originate in the Powder River Basin, and is considered friable and volatile, e.g., easily broken down and easy to catch fire. While the proponent has argued that most of the coal dust "shakes out" within the first miles from its source, the reality is over the course of the long haul the coal will slowly break down into smaller pieces, creating more dust potential. Coupled with the gusty and intense Columbia River Gorge winds, coal dust is not some theoretical possibility, but a reality that tribal fishers have personally experienced with coal trains currently traversing the Gorge. Simply put, the current levels of coal dust are already unacceptable to tribal members living and working along the Columbia River and the railroad tracks that are immediately adjacent thereto. Increasing these impacts would be intolerable.

The Morrow Pacific Project attempts to address this issue by proposing fully enclosed storage and barging. However, the coal trains leading to the port are open. In addition, it is likely that coal dust will escape during the transfer process from the Port of Morrow site to the barge as well as the transfer between the barge and the panamax vessels at Port Westward. As noted in the letter from the U.S. EPA to the Corps (April 5, 2012), there is a potential for adverse effects in air quality from the airborne coal dust as well as the diesel used by the barges and ships.

Coal dust will also enter the river and effect water quality at both the Port of Morrow and Port Westward. While the biological impacts are not well-studied, coal's inherent

properties and the potential for fish ingestion is cause for concern. Since there are many questions and uncertainties, targeted analysis is needed before any permit is issued. We also encourage the State of Oregon to conduct a Clean Water Act section 401 water quality certification process for this project to examine the effects of the project on water quality.

The project will require extensive work in and over water, including building over 200 piles and adding 15,000 square feet of dock. Because of these additions to the Port, we recommend that the Corps require the applicant to apply for a Clean Water Act section 404 permit. While there are other docks at the site, this construction will bring new and expanded use to an area of navigable waters that will affect the flow of the river and will add new fill to the area.

This area is also within Traditional Cultural Property (TCP) designated land and is likely to have significant cultural resources. In addition, and as the application notes, there are ESA-listed aquatic species that migrate near and around the terminal. While the "Joint Permit Application Form" acknowledges these and other issues, it is clear that nothing has been addressed or reviewed in any detail, and none of CRITFC's member tribes have been consulted on any of these very important issues.

Treaty Fishing and Fishery Resources

In 1855, the CRITFC tribes signed treaties with the United States, peacefully ceding title to millions of acres of land in the Basin while reserving their rights to continue fishing at their usual and accustomed fishing places. The rights to access these sites have been fought for and preserved through the court system, and as a result, the tribes' treaty-protected right of access to usual and accustomed fishing grounds is firmly established as a matter of law.² After the construction of The Dalles Dam, and the subsequent flooding of Celilo Falls, the tribes and states agreed that the tribes would have exclusive access to commercial fishing in an area called "Zone 6", a section of the river extending from Bonneville to McNary dams. Tribal fishers conduct year-round subsistence, ceremonial and commercial fishing in that zone with fishing gear types regulated by the tribes but including hoopnets fished from platforms built by tribal members along the river and gillnets anchored to the shore or river bottom.

Shipping traffic has created many safety issues with gillnet fishers, and dock construction along the river has displaced fishing sites within Zone 6. The Port of Morrow is no different. Tribal members from the CRITFC tribes have fishers who lay their nets and make their livelihood within the Port of Morrow. There are numerous other sites within close vicinity up- and down-river from the Port as well. These are tribal people exercising

² The Supreme Court, and other federal courts, confirmed these rights in a number of cases. *See, e.g.,* *Sohappy v. Smith*, 302 F.Supp. 899 (D.Or. 1969), *aff'd*, *United States v. Oregon*, 529 F.2d 570 (9th Cir. 1976); *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979); *United States v. Winans*, 198 U.S. 371 (1905); *Confederated Tribes of the Umatilla Indian Reservation v. Alexander*, 440 F.Supp. 553 (D.Or. 1977).

their tribal treaty rights and projects such as the Morrow Pacific Project will directly and negatively interfere with the exercise of that right.

In addition to directly displacing fishing sites, the project brings concerns of increasing barge traffic by a magnitude of twenty-four barge trips each week. Barge traffic can interfere with fishing as well as be the leading cause of derelict nets, otherwise known as “ghost nets” in which nets are clipped and set adrift. These are very dangerous to aquatic creatures if left uncontrolled.

The Port of Morrow portion of the project is quite extensive and may harm the critical habitat that is designated near both parts of the project, i.e., Port Westward and the Port of Morrow. Before approving this permit application, the Corps needs to conduct significant environmental review, consult with the effected tribes, and initiate consultation with the resource agencies, NOAA Fisheries and U.S. Fish & Wildlife. Only after extensive review, analysis, and study, would it be appropriate to consider the permit application.

Climate Change and the Bigger Picture

Resource managers cannot make management decisions today without analyzing the potential for changes in the Earth’s climate on the resources they are managing. There is no question that coal is a big problem on many levels and for many reasons with relation to climate change. Coal is the leading contributor to atmospheric carbon dioxide and will ultimately cause major effects to the Pacific Northwest. The environmental review needs to consider these potential effects and account for them.

Burning coal also emits significant amounts of mercury and fine particulates, which are known to travel across the Pacific via the “jet stream” from Asia and are deposited in Oregon, Washington, and California. Most of the industrial mercury in the Pacific Northwest comes from these global sources. In 2004, scientists from Oregon State University observed with instruments mounted atop Mount Bachelor's Summit Express ski lift an enormous Asian plume laced with mercury and ozone. The fine-particle concentration of this plume that had transited the Pacific Ocean was about 20 micrograms per cubic meter, compared with the federal air quality standard of an average 65 micrograms during a 24 -hour period. Oregon is already struggling to manage current levels of mercury pollution.

The coal proposed to be shipped through the Port of Morrow and the other proposed Northwest sites would add to this air pollution burden. The proposed development at the Port of Morrow and how it is evaluated by the reviewing agencies will ultimately be a reflection of the seriousness of United States government policy and commitments to reduce greenhouse gases and manage toxic pollutants. We believe that additional levels of air and water pollution associated with the project are not acceptable.

Conclusion

We appreciate your consideration of our comments and are available to answer any questions you have about our concerns. We also look forward to working with you on this project and expanding the analysis if possible. If you have any questions, please feel free to contact me or Julie Carter at 503-238-0667.

Sincerely,

A handwritten signature in blue ink that reads "Babtist P. Lumley". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

Babtist Paul Lumley
Executive Director

Cc: Governor John Kitzhaber, State of Oregon
Governor Christine Gregoire, State of Washington
Lisa Jackson, Administrator, U.S. Environmental Protection Agency
Dennis McLerran, Administrator, Region 10, U.S. Environmental Protection Agency
Steve Gagnon, U.S. Army Corps of Engineers
J.R. Inglis, Tribal Liaison, Portland District, U.S. Army Corps of Engineers
Paul Cloutier, Tribal Liaison, Portland District, U.S. Army Corps of Engineers