



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

March 30, 2012

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**Re: Yakama Nation's Comments on APP0049123 (Ambre Energy, Coyote Island Terminal)**

Dear Director Solliday, Ms. Warner-Dickason, Messrs. Ryan and Redon:

For more than a century, outside private enterprises and governments have systematically ravaged the Yakama People's ancestral lands and waters. They've left a wake of destruction, nearly eradicated a Native culture that demands reverence for the environment, and swept away the resources upon which the Yakama People have relied for sustenance and spiritual health since time immemorial; all in the name of "progress." Today, in addressing the first ripple of a rising tide of coal transportation in the Columbia River Basin<sup>1</sup>, the State of Oregon serves as a small but potentially effective check against perpetuating this pattern of destroying the Yakama way of life. Part of your agency's mission statement is wholly applicable here, and provides that you are to "ensure a legacy for Oregonians ... through sound stewardship of lands, wetlands, [and] waterways ... ." In this instance, you have the opportunity to honor that mission statement by preventing further degradation of the Columbia River and the lands surrounding it from additional "development" undertaken in the name of immediate economic gain and without regard for the long-term consequences.

#### **COMMENTS ON AMBRE ENERGY'S APPLICATION No. APP0049123**

These are the comments of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation" or "Nation") on the Oregon Department of State Lands' ("DSL") review of Ambre Energy, d/b/a Coyote Island Terminal, LLC's ("Ambre") Application Number APP0049123 ("Application"). As a threshold matter, the Nation thanks DSL for accepting its comments and

<sup>1</sup> There are currently four known large-scale coal transport projects proposed for the Columbia River Basin that would effectively transform this fragile, already damaged landscape and waterway into a major coal export hub for United States coal en route to China. If permitted, this transformation will have far-reaching, long-term adverse impacts to the environment.

considering them as it undertakes its duties in review of Ambre's Application. The Nation is a federally recognized sovereign Indian nation. Furthermore, the Nation has reserved rights under a treaty with the United States of America ("Treaty of 1855") signed by the Nation in 1855 and ratified by the United States Congress in 1859 (12 Stat. 951). Among various reserved rights the Yakamas secured in the Treaty of 1855, is the right to take fish in all usual and accustomed places, including the Columbia River.

A constant visual reminder of the destructive pattern inflicted on the Columbia River Gorge area and its Native people is the glaring absence of Celilo Falls. Fifty-five years ago, onlookers watched as the completion of the Dalles Dam silenced the falls and destroyed an area sacred to the Yakama People. While the deliberate destruction of Celilo Falls and its surrounding villages are a symbol of the systematic destruction Yakamas have experienced in the name of progress, dams have had the immediate and ongoing effect of significantly eroding the Yakamas' right to take fish from the Columbia River and its tributaries.

Today, new fronts have been opened in the war against the Yakama way of life, including the effort to staggeringly increase the transportation of coal through the Yakamas' ancestral lands along the Columbia River that's sustained so much damage since outsiders arrived here. Like the dams, the coal now is hailed as an essential element for progress. But the definition of "progress" cannot be limited to pecuniary gain without regard to the long-term damages that financial gain will cause. In fact, anyone with an interest in ensuring a legacy for future generations "through sound stewardship" of lands must conclude that progress here means putting an end to this concerted effort to fundamentally transform and degrade the Columbia River Basin. With that in mind, through these comments the Yakama Nation highlights some of the apparent negative impacts approval of this particular application – and its corresponding cumulative impacts – will have on the region's fisheries, its air quality, global climate change, and the Yakama Nation's cultural resources.

By submission of these comments the Yakama Nation does not waive any rights to demand direct and meaningful government-to-government consultation with any governmental agency. Further, given the lack of information currently made available to the public for this project, the Yakama Nation reserves the right to supplement these comments as Ambre is compelled to release information critically important to meaningful environmental review. The Yakama Nation requests nothing more of the State of Oregon Department of State Lands than for it to live up to its mission statement. You should deny the above-referenced permit application unless comprehensive environmental analysis is accomplished and the interested indigenous peoples who've been historically ravaged by so-called "economic progress" are consulted as required by various laws, regulations, and treaties with the United States. At the very least, DSL should stay its review pending the comprehensive environmental review process that should take place at the federal level. Furthermore, before DSL makes any decision other than to reject this application as incomplete and inadequate under Oregon law, it should demand more information from Ambre Energy to fill in some of the glaring holes exposing the Application's deficiency, and it should prescribe a full state-level EIS to ensure Oregon's interests are protected should this project move forward.

We are currently working on the Nation's comments to the federal agency responsible for the environmental review under the National Environmental Policy Act ("NEPA") and expect to have those submitted in the next week or two. Those comments will set forth the Nation's request for a programmatic Environmental Impact Statement ("EIS") regarding all plans to significantly increase coal transportation through and exportation from the Northwestern United States, and its corresponding request for a comprehensive case-by-case EIS for every planned coal-related project. Frankly, until the cumulative impacts of all planned coal-transportation projects in Washington and Oregon have been identified and analyzed, including the impacts sustained from the burning of coal by its end user, and until the federal government consults with the Yakama Nation on a government-to-government level, no government should make any decisions that would allow the commencement of this project. In other words, the application is premature.

Even under DSL's own Removal and Fill Guidance ("RFG"), this application is incomplete. Before an application is complete under the RFG, it must contain "sufficient information for the Department and the public to make an informed evaluation of the project's effects, the availability of alternatives, and whether the mitigation is sufficient to offset the anticipated adverse effects."<sup>2</sup> The Nation notes, for example, Ambre's complete failure to even note the existence of tribal fishing sites in the area and identify the cumulative impacts Ambre's project will have on the tribal members who still rely on the river to support themselves and their loved ones. It's unconscionable that Ambre proposes to develop a coal export project that would transport 8.8 million tons of coal per year through the Columbia River Basin while refusing to acknowledge the tribal members' inextricably intertwined interests and the impacts to their fishing sites and their health implicated by this vast expansion of coal transportation in the region. And this is only one of many glaring deficiencies in this application.

At the very least, DSL should stay its decision pending the completion of programmatic and project-specific EIS's the Nation seeks under NEPA. In the alternative, DSL should demand more information from Ambre, hold public hearings on this matter, and require Ambre to complete a separate state-level EIS to address the specific issues identified here and in other comments submitted. A project of this magnitude should not be given any fast-track preference. Considering the history of damage and destruction of resources in this region, DSL should take a hard look. DSL should ensure that it serves its own stated mission and works to break the shameful pattern of destruction inflicted on the Yakama People in this area.

#### **A. Fisheries**

As indicated, the Treaty of 1855 reserved to the Nation the right to fish in perpetuity at all usual and accustomed places as they were known at the time of the Treaty signing. Though this right was significantly trampled upon through the destruction of Celilo Falls and other "development" in the area, in the legal arena, this powerful right has been affirmed and re-invigorated through extensive litigation beginning with the *U.S. v. Winans* case in 1911 and culminating with *United States v Oregon*, which is still active. The Yakama People continue to exercise their Treaty-

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<sup>2</sup> See RFG § 6, p. 6-5.

reserved fishing rights on the Columbia River and its tributaries within the Nation's Ceded Lands and its usual and accustomed use areas. The site of the proposed action described in the Application is located completely within an area of active commercial gillnet fishing by members of the Yakama Nation.

Members of the Yakama Nation fish for their subsistence and livelihoods on the Columbia River using set gillnets that typically are anchored at one end to the river bank and to an anchored buoy up to 400 feet offshore in an orientation perpendicular to the flow of the river. Adult salmon and steelhead migrating upriver encounter the nets and become entangled in the gillnet webbing. Fishers lift the nets 2-3 times per day from small, outboard-powered boats to harvest the fish from the webbing. Because the nets generally are most effective during hours of darkness, fishers typically visit the nets at least once – and often more frequently – during the night when fish are abundant. Several hundred tribal members utilize this method of fishing. In aggregate, they may deploy over 1,000 such nets on the Columbia between Bonneville and McNary dams in the fishery administrative area known as Zone 6. Weekly fishing periods are established by tribal regulation depending on the availability of harvestable fish from mid-May to early October and February 1 to late March.

### ***1. Impacts to Tribal Fishing Sites***

The proposed coal loading dock identified as the Coyote Island Terminal would have significant direct and indirect detrimental impacts to tribal fisheries in the project area. The dredge and fill operations at the proposed site will very likely destroy four tribal gillnet sites that Yakama members currently use to exercise their tribal fishing rights.<sup>3</sup> These particular threatened fishing sites are high quality and critically important to the tribal members who fish there. Construction of the proposed dock will at least interfere with, and may even lead to an end of gillnet fishing at this location. From the Nation's experience with other docks and mooring dolphins, maneuvering barges into and out of the proposed dock will at least interfere with, and perhaps prohibit, fishing at sites adjacent to the proposed dock itself. It is important to note that these sites are not held or owned by individual tribal fishermen in the sense of title ownership. But rather, the Treaty-protected sites are held in trust by the Yakama Nation government for use by its enrolled members. The Nation authorizes tribal members to fish at certain sites on the Columbia through a site registration process administered by the Nation's Fisheries Program. So the fishery is regulated in a site-oriented fashion meaning fishers authorized to fish at certain locations are not at liberty to simply move their fishing operation to another location on the river. The loss of fishing sites resulting from construction of the proposed dock would have the effect of disenfranchising the fishers authorized to fish at this location, would measurably diminish the number of fishing sites available to members of the Yakama Nation to exercise their Treaty-reserved right to fish at this usual and accustomed place. Put another way, construction of this project may directly violate the Treaty of 1855.

### ***2. Safety of Tribal Fisherman***

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<sup>3</sup> This is qualified, because there is insufficient information to determine precisely how many fishing sites Ambre's project will destroy.

Similarly, increased barge traffic through Zone 6 resulting from this project will directly and indirectly affect the safety of tribal fishers exercising their Treaty-reserved fishing rights. While the Application does not specify how much additional barge traffic this project will cause, it is reasonable to conclude that barge-and-tow activity in the project area would increase substantially; and the Corps of Engineers has confirmed as much. Each barge, particularly those in transit during hours of darkness and/or foul weather, represents an increased safety risk to fishers operating small boats, often at night and in foul weather, to harvest fish from their nets. Despite the fact that towboats are required to display lights indicating they are warped to one or more barges, the barges themselves are poorly lit and may obscure the lights of the towboat from the vantage point of a small boat. As tribal fishers may be hampered by foul weather gear, operating at night in otherwise dangerous conditions, and with barge lights obscured or confused by background lighting from Interstate 84 and fixed structures, increased barge traffic in the project area will considerably increase the safety risk to tribal fishers. The Application lacks any assessment of this increased hazard to tribal fishers and is thereby deficient in its scope. DSL should not issue a permit without analysis of the project's safety hazards to tribal fishers and without adequate mitigation for those impacts.

Coal transportation by rail also poses a potential risk to human health. Currently, there is a real risk of tribal fisherman being harmed or killed by trains traveling through the Columbia Gorge. This risk will only increase as more trains are required to transport coal to ports in the Columbia Basin. Further, the coal dust that will be accumulating along the rail lines in the Columbia Gorge poses yet another risk to human health. Coal dust has been well documented as a cause of disease in humans that sometimes results in death. Without adequate identification and analyses of these projects, DSL should not permit Ambre's project.

### ***3. Impacts to Water Quality & Aquatic Species***

Coal is associated with significant environmental problems including acidification of watersheds and metal contamination. It is likely that this project will result in the contamination of the Columbia River as chunks of coal and coal dust inadvertently fall or spill into the waters of the Columbia Basin from trains traveling to the Port of Morrow. In fact, Burlington Northern Santa Fe has stated that up to 500 lbs. of coal per car is lost during rail transportation. Coal would also likely spill into the Columbia Basin during overwater barge loading, barge accidents, or train derailment. The potential significant increase of inadvertent coal spillage in the Columbia Basin could adversely affect Yakama Nation tribal resources including our tribal fisheries. Toxic effects are both acute and chronic to the Columbia Basins' aquatic food web and culturally important aquatic foods including salmon, sturgeon, and lamprey.

### ***4. Impacts to Habitat***

Along with the toxic properties of coal there are habitat threats associated with construction of a new coal facility. Habitat for species listed under the Endangered Species Act ("ESA") will be affected by construction of the coal loading facility and create possible habitat for native and nonnative predators. Destruction of habitat and negative impacts to ESA-listed species must be evaluated and fully considered. Because of the potential impacts to our water, foods, and

ultimately our People, the DSL should require an analysis of these concerns in the review of this project and make the results available to the Yakama Nation for response before a permit may be issued.

## **B. Air Quality**

The Yakama Nation, the federal government, and others have worked extensively over the past decade to identify, analyze, and address air quality concerns in the Columbia River Gorge (“CRG”). Through research and monitoring we have found the CRG to have some of the highest levels of air pollution and acid rain in the Northwest.<sup>4</sup> Local coal-fired plants and China’s massive coal burning industry have been identified as major sources of this harmful pollution in the CRG.<sup>5</sup>

Toxic pollutants like mercury from burning coal, and other fossil fuels from the diesel-powered locomotives and marine vessels within the CRG, continue to impact the Yakama People and their cultural, historic, and Treaty-reserved resources. Not only is this harmful pollution damaging our sacred and irreplaceable pictographs and petroglyphs, it continues to impact and threaten our People and the resources that we depend on as these contaminants move through the air, water, and soil.<sup>6</sup>

Though not occurring soon enough, the planned closures of the last two remaining coal-fired plants in Oregon and Washington, PGE Boardman and TransAlta, are enormous victories for the region and demonstrates the region’s commitment to protecting human health and the environment. Given that we as a region are saying NO to coal-fired plants, we must ask why then would we now allow and facilitate the export of 8.8 million tons of coal to be burned in China each year, only to have its harmful contaminants come back to pollute the Pacific Northwest via hemispheric transport?

The weekly increase of an additional 11 trains, 12 loaded barge tows from Port of Morrow to Port of Westward, and 3 Panamax ships moving through the Columbia River Basin to Asia from the proposed Coyote Islands Terminal, will greatly aggravate the detrimental air emissions and toxic pollutants in the CRG.

Given the significant impacts that air pollutants from burning fossil fuels has on our People, cultural heritage and Treaty-reserved resources, it is imperative that the environmental analysis

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<sup>4</sup> R. S. Sletten, “The Effects of Air Pollution on Rock Images in the Columbia River Gorge: A Sacred Breath Project of the Yakama Nation” (2011).

<sup>5</sup> See, Jaffee, D. A. & Reidmiller, D.R., “Now you see it, now you don’t: Impact of temporary closures of a coal-fired power plant on air quality in the Columbia River Gorge National Scenic Area.” *Atmos. Chem. Phys.* 9, 7997-8005 (2009); Jaffee, D.A. & Strode S., “Fate and Transport of Atmospheric Mercury from Asia.” *Journal of Environmental Chemistry* 5(2), 121-126 (2008).

<sup>6</sup> R. S. Sletten, *The Effects of Air Pollution on Rock Images in the Columbia River Gorge: A Sacred Breath Project of the Yakama Nation* (2011); U.S. Environmental Protection Agency, *Columbia River Basin: State of the River Report for Toxics* (2009).

for the Coyote Island Terminal quantifies and analyzes the effects of air emissions and associated acid deposition from the transport and burning of coal caused by this proposal. To understand project-specific and cumulative impacts, these analyses should be conducted independent of and in combination with the other coal export facilities being proposed in Oregon and Washington. Additionally, the Yakama Nation expects that transient coal dust from the transport and storage of coal at the transloading facility will be quantified and its effects on human health and the environment will be fully analyzed.

### **C. Climate Change**

The transport and burning of 8.8 million tons of coal per year, as associated with the Coyote Island Terminal transloading facility, would have significant greenhouse gas emissions, thus contributing to and exacerbating climate change. The Yakama Nation's traditional and subsistence ways of life are in jeopardy by profound influences of climate change, especially upon water — both the quantity and quality — which affects changes in flora and fauna in the region. Warming water temperatures associated with climate change have been shown to increase the levels of toxins in water bodies, thus increasing the amount of toxins that are taken up into fish and affecting human health. Research has shown specifically that the accumulation of methylized mercury in our fish and wildlife is linked to rising water temperatures in the Columbia Basin.

The Yakama Nation expects that greenhouse gas emissions and climate change impacts associated with this proposal will be quantified and analyzed, both independent of and in combination with the other coal export facilities being proposed in Oregon and Washington. These analyses must consider all emissions from rail and barge shipments from Montana and Wyoming to Asia, operations at port terminals, as well as the burning of this coal in Asia.

### **D. Cultural Resources**

Many known culturally sensitive sites are located along the rail routes and within close proximity to the proposed transloading facilities in both Washington and Oregon for the four proposed coal transportation/exportation projects. The Yakama Nation is concerned that rail construction, increased barge traffic, and construction of the proposed transloading facility will impact known archaeological sites, previously undocumented archaeological sites, and Traditional Cultural Properties.

The proposed Coyote Island Terminal is located within an area of extreme cultural sensitivity to the Yakama Nation. Prior to inundation by the dams, the Blalock Islands (including Coyote Island) were a river crossing and ancestral fishing area. Numerous burial sites, legendary sites, and village locations are known within close proximity to the proposed construction. The Coyote Island Terminal is within ¼ mile to the Coyote Island Burial Site, recorded as archaeological sites 45BN77. Though this site has been inundated by the backwaters of John Day Dam, potential impacts remain through construction, sedimentation changes during construction, construction-related dredging and filling, increased barge traffic over time, reservoir management changes required to accommodate increased shipping, and shipping accidents/spills. Further,

many cultural sites similar to the Coyote Island Burial Site exist within close proximity and may be impacted by the proposed project.

The information provided regarding this project is not sufficient to allow for examination of cumulative effects and impacts of this project on cultural resources over time. We request further information regarding the proposed life of the project, to what degree will there be dredge/fill operations for the construction area as well as dredge/fill of the shipping channel over time. Resources, though currently inundated, remain a high concern. Dredging/filling, will greatly impact cultural resources, fish habitat, ancestral fishing sites, Zone 6 Treaty Fishing Sites, and fishing sites throughout the upper and lower Columbia River in use today. We further request information regarding increased infrastructure requirements for overland transportation of coal to the Coyote Island Terminal; as such expansion will further impact these valued resources.

## CONCLUSION

DSL should exercise its authority to meet its mission statement and reject this Application as incomplete; or at the very least, DSL should (1) stay its decision pending the EIS's the Nation and others are demanding under NEPA, (2) demand more information from Ambre so that DSL's decision on this project will be informed and comply with applicable laws and regulations, and (3) require its own state-level EIS (or similar full environmental review) to ensure that DSL honors its mission. Your agency is uniquely situated to bring the appropriate level of scrutiny a project of this magnitude requires, setting an example for other agencies to follow. Further, you have the opportunity to start righting the course when it comes to the systematic harm inflicted on the Yakama People and their culture over the past century.

This Application is woefully inadequate and incomplete under Oregon law. For example, the Application references environmental documents that will be forthcoming but are not now available. Specifically regarding the deficient information provided, before any decision is made other than to deny the Application as incomplete, we request:

- Additional information on the proposed life of the project, specifically relating to what degree Ambre intends to dredge or fill the construction area and the shipping channel over time.
- Additional information regarding increased infrastructure requirements for overland transportation of coal to the Coyote Island Terminal; given that such expansion will further impact these valued resources.
- Additional information regarding cumulative impacts specifically relating to the quantification of increased greenhouse gas emissions resulting from this project, and other coal-related projects in the area.
- Additional information regarding the cumulative impacts this project will have to all cultural resources in the area, including those resources inundated.



The purpose of this Application – shipping coal by railcar from upriver locations to barges for transport downriver – implies enormous cultural, environmental, economic, and legal consequences that cannot be adequately addressed in an Application review. Further, the purpose for the proposed Coyote Island Terminal is completely inconsistent with the vast regional investment in restoring the fish and wildlife resources devastated by human development of the Columbia Basin. The creation of a new and certain threat to the health of the Columbia River and its resources jeopardizes the integrity of regional agreements, commitments, and underlying biological analyses that are intended to improve environmental quality and natural resources status. Among these regional commitments is the Federal Columbia River Power System (“FCRPS”) Biological Opinion (“BiOp”) issued by National Marine Fisheries Service to the federal action agencies, which prescribes actions necessary for the FCRPS to avoid jeopardizing the existence of ESA-listed salmon and steelhead. Nowhere does the BiOp anticipate the development of a new and certain biological stressor to species already on the brink of extinction.

The time is ripe to put an end to the wake of destruction outside enterprises and governments have inflicted on the Yakama People’s ancestral lands and waters. We respectfully request your agency to seize this opportunity as the moment in time when the people now occupying the lands at issue here turned the tide against destructive forces and gave meaning to your agency’s mission statement, so that we may all ensure a legacy for future generations through sound stewardship of lands, wetlands, and waterways.

For any questions, please contact Philip Rigdon at (509) 865-5121 ext. 4655. For future notices regarding your agency’s involvement in this matter, please notify our Environmental Review Coordinator, Kristina Proszek at kris@yakama.com and our legal counsel, Joe Sexton, at Joe@yakamanation-olc.org.

Sincerely,



Philip Rigdon  
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