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US Army Corps of Engineers
Regulatory Branch
c/o Ron Wilcox, Project Manager
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Submitted Via Email to: ronald.j.wilcox@usace.army.mil

RE: BNSF Railway; NWS-2012-435 -- Longview 'wye' track relocation CWA 404 permit and NEPA analysis.

U.S. Army Corps of Engineers:

Columbia Riverkeeper (Riverkeeper) submits these comments regarding BNSF Railway's (BNSF) application for a Clean Water Act (CWA) Section 404 permit. Our organization is deeply invested in clean water, strong salmon runs, and healthy communities. Riverkeeper represents over 3,000 members in Oregon and Washington and regularly comments on decisions impacting the Columbia River and its tributaries.

Climate change is one of the greatest threats to the Columbia River Basin. Accordingly, Riverkeeper supports efforts to reduce greenhouse gas emissions by improving rail infrastructure to support commuter rail and the transportation of local products in the Pacific Northwest. However, we strongly oppose exporting coal through West Coast ports, including ports along the Columbia at the Port of Morrow, Port of St. Helens (Port Westward), and the proposed Millennium Bulk Logistics (Millennium) terminal at the former Reynolds Aluminum property.

It is unclear whether BNSF's proposed project will directly or indirectly benefit coal export. However, exporting coal through West Coast ports *will* necessitate an un-known number of rail improvements and modifications. For example, public records of the Port of Longview and the Cowlitz-Wahkiakum Council of Governments, as well as Ambre Energy's (Ambre) public statements, reveal that Ambre's proposed Millennium terminal would require a series of rail improvements in the Longview Industrial Area. Riverkeeper submits these comments

knowing that many coal-related rail improvement projects are slated for the Columbia River area, and in anticipation that BNSF's project may benefit coal transport.

Rail construction projects facilitating coal transport cannot be analyzed in isolation from the broader impacts of coal export. Riverkeeper requests that the U.S. Army Corps of Engineers (Corps) thoroughly explain whether BNSF's proposed track relocation would create or enhance coal train access to Ambre's proposed Millennium coal export terminal. If BNSF's proposed project will directly or indirectly advance coal export, the Corps must analyze the impacts of the Millennium terminal in conjunction with the effects of the track relocation project. Specifically, if BNSF's track relocation project will increase rail capacity or improve rail access to the Millennium site, the Corps should incorporate BNSF's track relocation project into the forthcoming NEPA review for the Millennium terminal.

I. The Corps must re-issue the Public Notice and explain whether BNSF's track relocation will create or enhance coal train access to the proposed Millennium coal export terminal.

To facilitate meaningful public comment, the Corps' Public Notice must explain whether the proposed project will directly or indirectly improve coal train access to the proposed Millennium coal export terminal. The Corps' public notice for 404 permits must "give a clear understanding of the nature and magnitude of the activity to generate meaningful comment" so that the Corps can "evaluate the [project's] probable impact on the public interest." 33 C.F.R. § 325.3(a); *see also* 33 C.F.R. §§ 325.3(a)(5) & (13). In addition, the Council on Environmental Quality's (CEQ) regulations require that agencies engaged in the NEPA process "involve ... the public, to the extent practicable, in preparing assessments." 40 C.F.R. § 1501.4(b); *see also* 40 C.F.R. § 1506.6(a). An agency preparing an EA is under a duty to provide the public with as much environmental information as is practicable. *Bering Strait Citizens for Responsible Development v. U.S. Army Corps of Engineers*, 524 F.3d 938, 953 (9th Cir. 2008) (*citing Sierra Nevada Forest Prot. Campaign v. Weingardt*, 376 F.Supp.2d 984, 991 (E.D. Cal. 2005)). By failing to discuss whether BNSF's track relocation project will facilitate coal train traffic and international coal export, the Corps' Public Notice does not give the public a clear understanding of the project's nature or its probable impact on the public interest.

As the Corps is well aware, coal export is highly controversial. For example, the Corps received over 25,000 comments expressing concern with and opposition to Ambre's Morrow Pacific coal export project. Elected officials, state and federal agencies, and Tribes across Oregon and Washington have called on the Corps to prepare a programmatic or "area wide" Environmental Impact Statement (EIS) examining the wide ranging impacts of coal export on public health and the environment.

Because the Corps is currently engaged in the NEPA process for the Millennium terminal, the Corps must carefully analyze and disclose any rail improvement projects—including BNSF's proposed project—that are "connected actions" with the proposed Millennium terminal. *See* Subsection II(c), *infra*. The Corps must also disclose whether the proposed Millennium terminal is a "reasonably foreseeable future action" and, if so, analyze the environmental impacts of the track relocation and as part of the Millennium EIS.

It is both practicable and reasonable for the Corps to determine and disclose whether Ambre's coal trains will directly or indirectly benefit from BNSF's track relocation project. The Corps must therefore re-issue the Public Notice to explain whether and how the proposed project implicates coal transport and export.

II. The Corps's NEPA obligations.

a. The Corps should prepare a programmatic EIS on coal export.

The Corps should prepare a programmatic Environmental Impact Statement (PEIS) on the consequences of exporting Powder River Basin coal. As noted above, stakeholders—including EPA, local municipalities, the Oregon State Governor's Office, Tribes, and the Washington Department of Natural Resources—are also calling on the Corps to comprehensively address the adverse impacts of coal export in a PEIS. Exporting Powder River Basin coal through West Coast ports raises national policy questions and regional and global environmental concerns that project-specific NEPA documents cannot adequately address. Given the wide variety of impacts, the national policy implications, and the public controversy over West Coast coal export, a PEIS is appropriate and necessary.

b. The Corps' Public Notice does not discuss the 'need' for this project.

CEQ's NEPA regulations make clear that both Environmental Assessments (EA) and EISs must discuss the "need" for proposed projects. 40 C.F.R. §§ 1502.13 and 1508.9(b). The Corps' Public Notice for BNSF's project never describes the need for the proposed track relocation. Thus, the Corps must explain why the track relocation is necessary, and if it is being done to support coal transport.

c. NEPA analysis of BNSF's proposed track relocation must include the cumulative impacts of Ambre's proposed Millennium coal export terminal.

If BNSF's track relocation would benefit the proposed Millennium terminal, the impacts of the terminal are 'cumulative impacts' of BNSF's project, and the Corps must analyze both projects in the same NEPA document. Each NEPA document must analyze the cumulative impacts of the proposed project. 40 C.F.R. § 1508.25(c); *Save the Yaak Committee v. Block*, 840 F.2d 714, 720 (9th Cir. 1988) (holding that both EAs and EISs must analyze "cumulative impacts"). "Cumulative impacts" are the impacts of the proposed project when added to the impacts of "reasonably foreseeable future actions..." 40 C.F.R. § 1508.7. If the track modifications will directly or indirectly support coal transport, the proposed Millennium proposed coal export terminal is a 'reasonably foreseeable future action' because Ambre has applied for permits to construct the terminal, and because Ambre has stated that the terminal would necessitate railway modification around the Longview Industrial Area.

d. If the proposed track relocation will benefit coal export, BNSF's project and the Millennium terminal are 'connected actions' for NEPA purposes.

If BNSF's project would facilitate coal export from the proposed Millennium terminal, the Corps must address the impacts of both projects in the same NEPA analysis. 40 C.F.R. § 1508.25(a)(1); *Save the Yaak Committee v. Block*, 840 F.2d 714, 720 (9th Cir. 1988) (explaining that both EAs and EISs must analyze "connected actions"). Actions are "connected" if they would not occur without each other. *Wetlands Action Network v. U.S. Army Corps of Eng'rs*, 222 F.3d 1105, 1118 (9th Cir. 2000); *see also Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985) (A logging project and a road to facilitate the logging were 'connected actions' and had to be considered in a single NEPA document because "the timber sales [could not] proceed without the road, and the road would not be built but for the contemplated timber sales."). If the purpose

of BNSF's proposed track relocation is to enhance coal train access to the Millennium terminal, then the two proposals are "connected actions" because the coal terminal cannot proceed without the rail improvements and the rail improvements would not be built but for the Millennium terminal. *See Thomas v. Peterson*, 753 F.2d at 758.

III. The Corps must analyze the numerous environmental and social impacts of coal transportation and export.

Because BNSF's rail expansion project likely benefits BNSF's and Ambre's efforts to transport coal to Longview, the Corps must address the far-reaching social, environmental, and human health impacts of transporting, exporting, and burning Powder River Basin coal. Riverkeeper's comments to the Corps regarding the EA for the Coyote Island Terminal at the Port of Morrow discussed these impacts in great detail. Riverkeeper attaches and incorporates those comments by reference. *See* CRK Exhibit 1 (Columbia Riverkeeper *et al.* Comments on Ambre's Morrow Pacific Project, May 3, 2012).

Coal is most commonly transported via open-top rail cars, which can lose an average of 500 pounds of coal dust per car.¹ Coal dust causes numerous respiratory diseases, including Black Lung, bronchitis, and emphysema, and can exacerbate asthma and chronic obstructive pulmonary disease.² Powder River Basin coal dust also contains heavy metals, including lead, mercury, chromium, and uranium, which threaten to degrade water quality and adversely impact salmon and steelhead.³ While surfactants and loading practices might reduce coal dust, surfactants contain a myriad of chemicals that have not yet been adequately studied and could cause a number of harmful impacts.⁴

Besides coal dust, diesel emissions from locomotives degrade air quality and impact human health.⁵ The Corps must also consider that coal combustion drives climate change, ocean acidification, and mercury deposition; real and tangible threats to human health and the natural resources of the Columbia Basin.⁶

¹ CRK Exhibit 1 at 10.

² *Id.*

³ *Id.* at 24–25.

⁴ *Id.* at 10.

⁵ *Id.* at 16.

⁶ *Id.* at 16–20.

IV. Because BNSF’s proposed track relocation is not water-dependant, the 404 Guidelines prohibit the Corps from issuing the permit.

The Corps cannot grant a 404 permit “if there is a practicable alternative to the proposed [project] which would have less adverse impact on the aquatic ecosystem” 40 C.F.R. § 230.10(a). Additionally, if a project is proposed in a “special aquatic site” like a wetland, “practicable alternatives” to the discharge are *presumed* available so long as the proposed project is not water-dependant. 40 C.F.R. § 230.10(a)(3); *Butte Env’tl. Council v. United States Army Corps of Eng’Rs*, 607 F.3d 570, 574–75 (9th Cir. 2010). BNSF’s proposed track relocation would be sited in a wetland, a “special aquatic site.” 40 C.F.R. §§ 230(q-1) & 230.41. The basic purpose of BNSF’s proposed project—to improve rail access in and out of the Longview Industrial Area—is not water-dependent. Therefore, practicable alternatives to BNSF’s project that have less adverse impact on the aquatic ecosystem are *presumed* to exist and the Corps may not issue the 404 permit. 40 C.F.R. § 230.10(a).

V. If BNSF’s track relocation project would substantially benefit coal transport, the project is contrary to the public interest.

Riverkeeper firmly supports improving railroad infrastructure to reduce the region’s greenhouse gas emissions. However, coal transportation and export is contrary to the public interest. Before issuing a 404 permit, the Corps must determine that the probable impacts and intended uses of the proposed project are in the public interest. 33 C.F.R. § 320.4(a)(1). Coal transport and export has serious local and global environmental consequences and poses severe health threats to anyone in proximity to rail routes or coal terminals. Exporting cheap, dirty energy to the United States’ economic competitors it is hardly in the nation’s public interest. If BNSF’s track relocation project will substantially benefit coal transport, the Corps must deny the permit application.

VI. The Corps’ obligation to protect threatened and endangered species.

The Corps must consult with the National Marine Fisheries Service to ensure that the proposed track relocation and its associated impacts will not jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify any designated critical habitat. 16 U.S.C. § 1536(a)(2). Threatened fish species, including Lower Columbia River

Steelhead, Coho Salmon, and Chinook Salmon inhabit the lower Cowlitz and Columbia Rivers near the project site. Additionally, the Cowlitz and mainstem Columbia Rivers are designated critical habitat for Lower Columbia River Steelhead and Chinook Salmon.⁷ Possible impacts to listed species and critical habitat include the filling of wetland rearing habitat, water quality degradation due to fugitive coal dust deposition, and accelerated global warming and ocean acidification.

VII. Conclusion

Riverkeeper strongly opposes exporting coal from ports along the Columbia, and will continue to monitor rail improvements and other projects that potentially enhance coal transportation and export. The Corps must thoroughly explain whether or not BNSF's proposed track relocation would create or enhance coal train access to the proposed Millennium coal export terminal. If BNSF's proposed project will directly or indirectly advance coal export, the Corps cannot analyze BNSF's rail relocation without discussing the intertwined effects of coal export.

Sincerely,

Miles Johnson
Clean Water Attorney, Columbia Riverkeeper

⁷ NMFS, *Designation of Critical Habitat for 12 Evolutionarily Significant Units of West Coast Salmon and Steelhead in Washington, Oregon, and Idaho*, 70 Fed. Reg. 52,630 (Sept. 2, 2005).