

**COLUMBIA RIVERKEEPER
SIERRA CLUB
FRIENDS OF THE COLUMBIA GORGE
CLIMATE SOLUTIONS**

September 5, 2013

Honorable Governor John Kitzhaber
State Capitol Building
900 Court Street NE
Salem, OR 97310

Mr. Richard Whitman
Natural Resources Policy Director
Governor's Natural Resource Office
State Capitol Building
900 Court Street NE, Suite 160
Salem, OR 97310

**RE: U.S. Army Corps of Engineers' About-Face on Scope of Ambre Energy's
Morrow Pacific Coal Export Project**

Dear Honorable Governor Kitzhaber and Mr. Whitman,

On August 14, 2013, the U.S. Army Corps of Engineers (Corps) informed the National Marine Fisheries Service (NMFS) of its decision to shrink the scope of environmental review for Ambre Energy's Morrow Pacific project to the 41-acre terminal site at the Port of Morrow and an area spanning 3000 feet around the proposed coal loading dock. This decision, which leaves out the downstream coal terminal at Port Westward and the entire Columbia River, as well as barge, deep draft vessel, and rail impacts, is nothing short of shocking given appeals from the states of Oregon and Washington, local governments, other elected officials, and tens of thousands of members of the general public for a thorough review of coal export proposals.

We are deeply concerned by the Corps' announcement. The Corps is blatantly disregarding the input of the states of Oregon and Washington. Instead of heeding the states' calls for a comprehensive, thorough environmental review of the unprecedented impacts of coal export on Northwest communities and natural resources, the Corps' review has taken off on a new trajectory.

In fact, the Corps is not only digging in its heels, but retracting on past commitments. In 2012, the Corps submitted a Biological Assessment on the Morrow Pacific Project to NMFS. The 2012 Biological Assessment described the scope of the “action area” under the Endangered Species Act to include the terminal and dock at the Port of Morrow, the 219-mile barge route on the Columbia River, overwater coal-to-ship loading at Port Westward in the Columbia River Estuary, and ocean-vessel traffic from Port Westward to the Pacific Ocean. Under this scope of review, the Biological Assessment described impacts to over a dozen endangered and threatened species.

On August 14, 2013, the Corps submitted a revised Biological Assessment to NMFS, shrinking the “action area” to the 41-acre terminal site at the Port of Morrow and the 3000-foot area around the proposed coal loading dock. In its cover letter to NMFS, the Corps states, “the Corps will not be providing, or requiring the applicant to provide, the additional information you requested regarding the effects of rail transport, ocean transport, or end-use burning of coal for our ongoing ESA consultation.” The Corps’ Endangered Species Act analysis foreshadows the Corps’ analysis under the National Environmental Policy Act, a statute with substantially similar requirements on the scope of federal review.

The Corps is disregarding the State of Oregon’s strong requests for a thorough review of the public health, environmental, and climate change impacts of coal export. To date, the Corps has also rejected calls to prepare both an Area Wide Environmental Impact Statement on coal exports in the Northwest, as well as an individual Environmental Impact Statement for the Morrow Pacific Project.

We urge the State of Oregon to use its full authority to fill the federal void. This includes rejecting the removal-fill permit for the Port of Morrow dock because it is not in the public interest, requiring state aquatic land leases to use the Columbia River for coal export at Port Westward, and requiring a Clean Water Act Section 401 water quality certification at the Port of Morrow. In addition, Oregon should deny Ambre’s air permit because the project would exceed National Ambient Air Quality Standards for several pollutants, and put the health and safety of Oregonians at risk. Oregon should also deny water discharge permits if the facility does not meet the regulatory criteria. The State of Oregon has broad authority to protect public health and natural resources; if ever there was a time to exercise this authority, this is it.

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We appreciate your efforts to date to encourage a robust federal review and policy discussion on the impacts of exporting North American coal through Northwest ports. The Corps' recent announcement only underscores the importance of a larger federal policy discussion. We urge your administration to continue this dialogue with the federal government and, in the face of the Corps' failure to properly analyze the project, use the state's full authority to protect public health, state-owned land, and trust resources.

Sincerely,

Brett VandenHeuvel
Executive Director
Columbia Riverkeeper

Jessica Yarnall Loarie
Staff Attorney
Sierra Club

Michael Lang
Conservation Director
Friends of the Columbia Gorge

Beth Doglio
Campaign Director
Climate Solutions

Encl.

Letter from Corps to NMFS (Aug. 14, 2013)
Excerpt, Biological Assessment for the Morrow Pacific Project (August 2012)
Excerpt, Biological Assessment for the Morrow Pacific Project (August 2013)

Exhibit 1:

Letter from the U.S. Army Corps of Engineers to the National Marine Fisheries Service

(August 14, 2013)



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, PORTLAND DISTRICT
PO BOX 2946
PORTLAND OR 97208-2946

AUG 14 2013

Operations Division
Regulatory Branch
Corps No.: NWP-2012-56

William Stelle
National Marine Fisheries Service
Northwest Regional Office
7600 Sand Point Way N.E., Bldg. 1
Seattle, Washington 98115

Dear Mr. Stelle:

This letter is in regards to the U.S. Army Corps of Engineers (Corps) permit evaluation for the proposed Coyote Island Terminal coal transfer facility. In a letter dated November 23, 2012, the Corps requested the National Marine Fisheries Service (NMFS) initiate formal consultation pursuant to the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). NMFS requested additional information and raised other considerations in a letter dated December 27, 2012.

The Corps is responsible for ensuring that any activity it authorizes, funds, or carries out is in compliance with Section 7 of the ESA. The proposed Coyote Island Terminal is one element of a broader project (referred to by the applicant as the Morrow Pacific Project), which includes receipt of coal, barge transport, barge-ship transloading at Port Westward, and ocean transport. As currently proposed, the Coyote Island Terminal is the only portion of the broader project that requires authorization by the Corps.

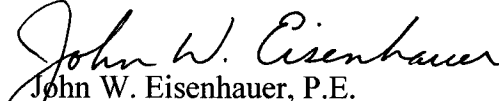
The information request from NMFS has been forwarded to the applicant. The Corps alerted the applicant of NMFS concerns and requested the applicant respond to the first six elements of the NMFS information request. Please find enclosed information prepared by the applicant in response to these six items, as well as an updated biological assessment.

Your letter requested additional information regarding the effects of rail transport, ocean transport, and end-use burning of coal. Such a scope would be much broader than the extent of the work subject to the Corps' authority under Section 10 of the Rivers and Harbors Act of 1899. Addressing effects of these activities on listed species or critical habitat is well beyond the Corps' role and responsibility and the requirements of the ESA. The Corps believes the action area extends only to a distance of 3000 feet from the project site. Therefore, the Corps will not be providing, or requiring the applicant to provide, the additional information you requested regarding the effects of rail transport, ocean transport, or end-use burning of coal for our ongoing ESA consultation.

The Portland District is currently developing an environmental assessment for the Coyote Island Terminal proposal, the results of which may be either a finding of no significant impact, or a determination that impacts are significant and warrant consideration through an Environmental Impact Statement (EIS). As part of this permit evaluation, the Corps has initiated staff-level and/or government-to-government consultation with all appropriate Federally recognized tribes. I recognize that each Federal agency has a trust responsibility, and encourage the NMFS tribal liaison and the Corps project manager to coordinate throughout our respective consultations.

We look forward to continuing Section 7 consultation with you based on the enclosed information. For further information regarding this project please contact Mr. Shawn Zinszer, Chief of the Portland District Regulatory Branch, at shawn.h.zinszer@usace.army.mil, or at (503) 808-4380. Thank you for your assistance and attention to this matter.

Sincerely,


John W. Eisenhauer, P.E.
Colonel, Corps of Engineers
District Engineer

Enclosures

Exhibit 2:

Excerpt, 2012 Morrow Pacific Project Biological Assessment



Biological Assessment

**COYOTE ISLAND TERMINAL
DOCK AND ATTENDANT
MORROW PACIFIC PROJECT**



ap anderson
perry
& associates, inc.
engineering • surveying • natural resources

1901 N. Fir Street
La Grande, Oregon 97850
(541) 963-8309
www.andersonperry.com

*April 2012
Updated August 2012*

BIOLOGICAL ASSESSMENT
FOR
THE COYOTE ISLAND TERMINAL DOCK AT THE PORT OF MORROW
AND THE ATTENDANT MORROW PACIFIC PROJECT

MORROW AND COLUMBIA COUNTIES, OREGON,
AND THE COLUMBIA RIVER NAVIGATION CHANNEL,
PORT OF MORROW TO THE COLUMBIA BAR

APRIL 2012
UPDATED AUGUST 2012

Prepared for:

Coyote Island Terminal, LLC
Ambre Energy North America

Prepared by:

ANDERSON PERRY & ASSOCIATES, INC.

La Grande, Oregon
Walla Walla, Washington

pursuant to Section 10 of the Rivers and Harbors Act of 1899. The USACE has jurisdiction over the installation of temporary and permanent piles to construct a barge loading dock in the John Day pool of the Columbia River. This BA has been prepared in association with the USACE JPA.

1.2 Project Information

Project Name:	Morrow Pacific Project
Location:	<p>Columbia River at Port of Morrow RM 271 HUC-6: 170701 T4N, R25E, Section 2, Willamette Meridian (W.M.), Morrow County, Oregon</p> <p>Columbia River at Port Westward RM 53 HUC-6: 170800 T8N, R4W, Section 37, W.M., Columbia County, Oregon</p> <p>Columbia River between the Port of Morrow (RM 271) and the Columbia Bar (RM -5)</p>
Project Applicant:	<p>Coyote Island Terminal, LLC Ambre Energy North America 170 S. Main Street, Suite 700 Salt Lake City, Utah 84101 Contact – John Thomas, Secretary (801) 539-3788</p>
Preparer:	<p>Anderson Perry & Associates, Inc. 1901 N. Fir Street La Grande, Oregon 97850 Contact – Sue Brady, Biologist (541) 963-8309</p>

1.3 Action Area

The ESA requires that potential effects to listed and proposed endangered and threatened species be evaluated in relation to the complex extent of area influenced by the proposed action, referred to as the action area (50 CFR Part 402.02). The action area encompasses the location(s) where measurable direct and indirect effects resulting from the proposed action are foreseeable and are reasonably certain to occur (USFWS, 1998; NMFS, 1996).

The action area includes all areas that could be potentially affected by the proposed action and is not limited to the actual construction and operation areas as defined in Section 3 of this BA.

For this BA, the action area is defined as three primary components:

1. **Port of Morrow.** This action area component consists of the enclosed storage buildings, enclosed coal conveyor system, loading dock with enclosed loader, dock walkway, dolphins for moorage, and all associated adjacent areas that could be impacted by Coyote Island's activities at the Port of Morrow. The Port of Morrow facility is at RM 271.
2. **Columbia River between the Port of Morrow and Port Westward.** This action area component consists of the Columbia River (below the OHWE) from the Port of Morrow to Port Westward. This project component involves use of established shipping lanes in the Columbia River by barges.
3. **Port Westward and Columbia River/Pacific Ocean.** This action area component consists of the Columbia River from Port Westward (RM 53) to its terminus with the Pacific Ocean, out to and including the Columbia Bar located approximately five miles offshore. This project component consists of transferring coal from barges to OGVs at Port Westward and use of established shipping lanes in the Columbia River to the Columbia Bar by OGVs.

Overall, the action area includes a total of 276 miles of Columbia River channel below the OHWE, plus approximately 41 acres of upland area at the new Port of Morrow facility at Boardman.

1.4 Project Purpose and Need

The purpose of the proposed project is to develop and successfully operate an environmentally responsible coal receiving and transfer facility in the Pacific Northwest for the sale of low-sulfur intermountain coal to Asia. The project has been designed to minimize train traffic through Oregon's urban areas and the Columbia River Gorge, reduce the exposure of coal to the atmosphere, and use existing infrastructure while minimizing impacts to the environment.

A coal receiving and transfer facility at the Port of Morrow, with an in-stream transloading facility at an existing dock at Port Westward, will begin to provide a secure route for intermountain coal to supply the substantial and growing need of Asia, establish an environmentally responsible coal export facility, and operate a socially responsible industry in Oregon. The upstream location of the facility at the Port of Morrow reduces the distance traveled and number of urban areas impacted by trains carrying coal treated with dust suppressant. At the two transfer and transloading facilities (Port of Morrow and Port Westward), coal is enclosed as it moves from train to storage facility to covered barge to OGV, minimizing exposure of coal or coal dust to humans or the environment. At the Port of Morrow through to Port Westward, the Morrow Pacific project creates local, family-wage jobs in Oregon, supports mining-related jobs nationally, and provides low-sulfur coal to Asian countries to generate electricity.

Exhibit 3:

Excerpt, 2013 Morrow Pacific Project Biological Assessment

BIOLOGICAL ASSESSMENT
FOR
COYOTE ISLAND TERMINAL DOCK AT THE PORT OF MORROW

MORROW COUNTY, OREGON,

AUGUST 2013

Prepared for:

Coyote Island Terminal, LLC
Ambre Energy North America

Prepared by:

ANDERSON PERRY & ASSOCIATES, INC.

La Grande, Oregon
Walla Walla, Washington

1.0 INTRODUCTION

1.1 Background

Coyote Island Terminal, LLC (the Applicant), a subsidiary of Ambre Energy North America, Inc., proposes to construct a new barge loading dock and coal receiving and storage facility at the Port of Morrow (Columbia River, River Mile [RM] 271).

At the facility, the Applicant will accept coal from trains arriving on existing rail lines at the Port of Morrow near Boardman, Oregon. At the Port of Morrow, coal will be unloaded in an enclosed rotary dump shed by Coyote Island Terminal. Coal will be transported on enclosed conveyors and temporarily stored in enclosed, negative pressure coal storage barns. Coal will be loaded, through an enclosed conveyor with telescoping loader, into enclosed barges.

At the Port of Morrow, six new components will be constructed: enclosed storage buildings, enclosed rail unloading shed, enclosed coal conveyor system, loading dock with enclosed telescoping loader, dock walkway, and dolphins for moorage. Outside of the rail unloading and coal storage buildings, and the majority of the conveyance system, the remaining components are associated with in-water construction. The loading dock facility at the Port of Morrow was designed to allow the moorage of a four-barge tow.

On May 16, 2011, the Port of Morrow Commission approved the development of the Port of Morrow coal transfer facility. On January 31, 2012, the Applicant filed a Joint Permit Application (JPA) for dock construction with the U.S. Army Corps of Engineers (USACE) pursuant to Section 10 of the Rivers and Harbors Act of 1899. The USACE has jurisdiction over the installation of temporary and permanent piles to construct a barge loading dock in the John Day pool of the Columbia River. This BA has been prepared in association with the USACE JPA.

1.2 Project Information

Project Name:	Morrow Pacific Project
Location:	Columbia River at Port of Morrow RM 271 HUC-6: 170701 T4N, R25E, Section 2, Willamette Meridian (W.M.), Morrow County, Oregon
Project Applicant:	Coyote Island Terminal, LLC Ambre Energy North America 170 S. Main Street, Suite 700 Salt Lake City, Utah 84101 Contact – Clark Moseley, P.E. (214) 725-5785

Preparer:	Anderson Perry & Associates, Inc. 1901 N. Fir Street La Grande, Oregon 97850 Contact – Sue Brady, Biologist (541) 963-8309
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1.3 Action Area

The ESA requires that potential effects to listed and proposed endangered and threatened species be evaluated in relation to the complex extent of area influenced by the proposed action, referred to as the action area (50 CFR Part 402.02). The action area encompasses the location(s) where measurable direct and indirect effects resulting from the proposed action are foreseeable and are reasonably certain to occur (USFWS, 1998; NMFS, 1996).

The action area includes all areas that could be potentially affected by the proposed action. For this BA, the action area is defined as approximately 41 acres at the new Port of Morrow facility, of which 8 acres are below water. This area will encompass the enclosed storage buildings, enclosed coal conveyor system, loading dock with enclosed loader, dock walkway, dolphins for moorage, as well as all associated adjacent areas that could be impacted by Coyote Island's activities at the Port of Morrow. The Port of Morrow facility is at RM 271.

1.4 Project Purpose and Need

The purpose of the proposed action is to develop and successfully operate an environmentally responsible coal receiving and transfer facility in the Pacific Northwest. The project has been designed to minimize train traffic through Oregon's urban areas and the Columbia River Gorge, reduce the exposure of coal to the atmosphere, and use existing infrastructure while minimizing impacts to the environment.

A coal receiving and transfer facility at the Port of Morrow will begin to provide a secure route for intermountain coal to supply the substantial and growing need of Asia, establish an environmentally responsible coal export facility, and operate a socially responsible industry in Oregon. The upstream location of the facility at the Port of Morrow reduces the distance traveled and number of urban areas impacted by trains carrying coal treated with dust suppressant. At the transfer facility, coal is enclosed as it moves from train to storage facility to covered barge. At the Port of Morrow, the project creates local, family-wage jobs in Oregon, supports mining-related jobs nationally, and provides low-sulfur coal to Asian countries to generate electricity.