

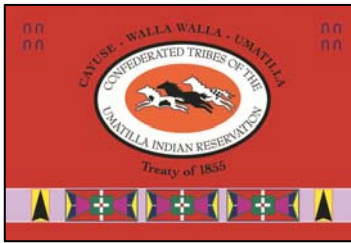
**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION**

IN THE MATTERS OF)	
)	
LNG Development Company, LLC)	Docket Nos. CP09-6-000, CP09-6-001
)	
Oregon Pipeline Company, LLC)	Docket Nos. CP09-7-000, CP09-7-001
)	
Northwest Pipeline, LLC)	Docket No. CP13-507-000

The Confederated Tribes of the Umatilla Indian Reservation filed the attached comments to the United States Army Corps of Engineers on January, 16, 2015 regarding the above captioned projects. These comments are not addressed in the environmental review documents and should be considered in the above captioned proceedings.

Confederated Tribes *of the*
Umatilla Indian Reservation

Department of Natural Resources
Administration



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January 16, 2015

Via E-mail and U.S. Mail

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Re: Oregon LNG Project, U.S. Army Corps NWP-2005-748

Dear Sirs:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) offers the following initial comments on the proposed Oregon LNG project. The CTUIR DNR has multiple concerns about this project. It is likely to have a variety of impacts on the Treaty and sovereign rights and interests of the CTUIR. Some of these impacts are potentially quite harmful. Due to this fact, the CTUIR requests formal consultation regarding the Corps' review of this permit application and requests a meeting in furtherance of this consultation.

The CTUIR DNR believes that it is inappropriate for the Corps to issue any permit at this time. Such issuance would be premature, as an adequate analysis of the project has not been conducted. We understand that a full Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act is planned for the future. That EIS will provide a more comprehensive and thorough analysis, but it still remains to be done. Furthermore, the opportunity to the materials that were provided (short of an EIS) was insufficient. While a 60-

day review and comment period from the time of notice was afforded, the bulk of the permit application information was not provided until nearly half of this period had elapsed. The information that was provided (the application and biological assessment), while certainly not at all equivalent to an EIS or its rigorous level of detail or analysis, was nevertheless lengthy and complicated and warranted more time for examination.

While we requested an extension of time for review, that request was denied. Accordingly, these initial substantive comments—beyond the immediate process-related issues and deficiencies noted above—are necessarily abbreviated and will deal with only some of the major concerns, and in summary form. It is unclear why the Corps initially rushed this permit application for review. The public notice indicated that “[a]dditional information may be obtained from Richard Chong, Project Manager” at the Corps. When the CTUIR DNR requested such documents, they were not made available to us until almost halfway through the comment period. The public notice also stated that the Corps was a cooperating agency in assisting the Federal Energy Regulatory Commission; however, FERC’s database indicates that the Corps didn’t request to cooperating agency status until almost 30 days after it issued the public notice. In the future, the CTUIR requests that the Corps have the documents available for review prior to issuing the public notice to avoid the difficulties that were presented in this case.

The CTUIR has the “right of taking fish” at all usual and accustomed places throughout the Pacific Northwest, as secured in the Treaty of 1855 with the United States.¹ That right means that there must be fish to take, and access to the places to take them. The Corps has a fiduciary obligation, in carrying out “any Federal government action” that may affect this right, to honor, respect, and uphold the right. In carrying out its fiduciary duty, it is the government’s, and consequently the Corps’, responsibility to ensure that Indian treaty rights are given full effect. *NW Seafarms v. US Army Corps*, 931 F.Supp. 1515 (W.D. Wash. 1996). We acknowledge and appreciate the instances where the Corps has done so in the past. Processing the permit application for the Oregon LNG project is another such instance where the Corps can and must consider these treaty- and trust-based factors.

The CTUIR actively co-manages fishery resources along with federal and state authorities, including implementation of management plans developed through the *United States v. Oregon* process overseen by the Oregon Federal District Court. The CTUIR is also actively involved in state and federal salmon recovery planning and the implementation of protection and restoration projects on-reservation, throughout our ceded lands, and beyond.

Protecting and restoring Columbia River estuarine habitat is vital for the recovery of thirteen salmon stocks listed as threatened or endangered under the Endangered Species Act (ESA) and other, non-ESA-listed salmon stocks, Pacific lamprey and sturgeon (all subject to the CTUIR “right of taking fish”). The importance of a healthy, intact estuary to the survival and recovery

¹ 12 Stat. 945, June 9, 1855 (Ratified March 8, 1959; Proclaimed April 11, 1859).

of listed and unlisted salmon species cannot be understated.² Anadromous fish stocks that could be affected by construction and operation of the project and associated infrastructure support tribal ceremonial, subsistence and commercial fisheries in Lower Columbia River Zone 6.

This would be a major project, and the CTUIR DNR's questions and concerns are many and serious. It would entail constructing an LNG terminal and industrial dock and a high-pressure natural gas pipeline. Deepening the Columbia River would be required—initially, removing 1.2 million cubic yards of river bottom to dock tankers, and periodic maintenance dredging of 300,000 cubic yards to maintain the facility. Filling nearly 34 acres of palustrine and estuarine wetlands to build the Terminal and access road is proposed. The pipeline route will affect large tracts of land near the Columbia River and in its extensive watershed, traversing wetlands and other critical habitat.³

In addition, terminal operations will require withdrawing 10,100 acre-feet of water per year from the Columbia River estuary. Oregon LNG has indicated (in its water pollution discharge permit application) that the terminal would discharge between 1,000 and 2,600 gallons per minute of process wastewater and up to 1,500 gallons per minute of stormwater to the Columbia River. The CTUIR DNR would like to know more clearly the nature, extent and timing of the pollutants (in both wastewater and stormwater) that will be discharged from the site, given that the River itself and many of its fish inhabitants already suffer from extensive contamination from many sources.

The CTUIR DNR would also like to see a more careful examination of how the drastically increased tanker traffic in the sensitive estuary environment will affect fish species that reside or migrate through there. Part of this examination should more closely address the effects of the exchange of tanker ballast water (discharge/uptake) and the mechanisms that will be utilized to protect fish from entrainment, conflict with introduced invasive species, wake stranding, etc.

All these actions and activities (and others not enumerated here) would appear to pose serious and irreversible risks of harm to anadromous fish rearing and adult holding capacity, and to habitat needed to support other treaty resources such as sturgeon and Pacific lamprey. Additional natural gas production and use fostered by the project will further exacerbate global climate change, ocean acidification and other related consequences, which are already occurring today and taking a toll on resources vital to tribal life, culture and traditions. The applicant's proposal does not assure us, or indicate with the necessary degree of certainty, that all these potential risks and threats could be successfully avoided or effectively mitigated to the extent required by a project of this magnitude.

² See, e.g., Bottom, D. et. al, *Salmon Life Histories, Habitat, and Food Webs in the Columbia River Estuary: An Overview of Research Results 2002-2006*, NOAA (2008).

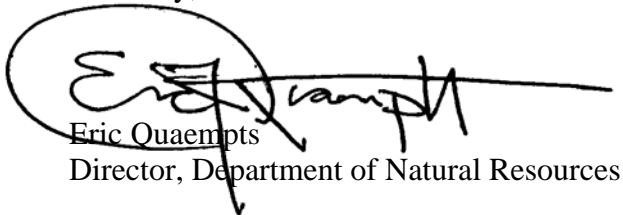
³ While a new natural gas pipeline from the Canadian border to Woodland, Washington—the Washington Expansion Project pipeline (WEP Pipeline)—would be required, it is not part of the application. Its impacts would no doubt significantly add to those of the more circumscribed project proposed in the application, and should not be discounted.

CTUIR DNR Letter to U.S. Army Corps of Engineers
Subject: Oregon LNG Project, U.S. Army Corps NWP-2005-748
January 16, 2015
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Finally, there are a few corrections and omissions that should be addressed in the public notice. For instance, among the listed project purposes is that it is to “facilitate the export of North American and Canadian natural gas....” This facility is a bidirectional facility that will facilitate import *and* export of natural gas.⁴ Furthermore, of the resources identified in the public notice, treaty-reserved rights and resources were not identified. In the future, please make sure all regulatory public notices include reference to review of impacts to treaty-reserved rights and resources.

Thank you for your consideration of our comments. The CTUIR reserves the right to provide additional comments and input to the Corps regarding this project, pursuant to and in conformance with our government-to-government relationship, the Corps’ Native American Policy, and applicable Executive and Secretarial Orders. Please have your staff contact Audie Huber, Intergovernmental Affairs Manager, DNR, at 541-429-7228 if you have any questions, and to schedule a meeting for formal consultation on this project.

Sincerely,



Eric Quaempts
Director, Department of Natural Resources

⁴ See October 21, 2014, letter to Mr. Richard Chong from CH2MHILL regarding Permit Application, page 1.