



Nisqually Indian Tribe

Natural Resources Division
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January 15, 2013

GPT/Custer Spur EIS
1100 – 112th Ave. NE, Suite 400
Bellevue, Washington 98004

RE: Comments of Scoping Notice
Proposed Gateway Pacific Terminal EIS

Dear Joint Agencies:

On behalf of the Nisqually Indian Tribe, I am providing comments on the appropriate scope of the Environmental Impact Statement to be prepared for the proposed Gateway Pacific Terminal. This letter is limited to the scope of the EIS, not on the appropriateness of the proposed coal export facility itself.

Impact of Fisheries Habitat and the Nisqually Tribe's Treaty Rights

The Nisqually Indian Tribe, because of its treaty with the United States, codified by federal law and sustained by multiple federal court decisions, has the right to harvest fish and shellfish in its usual and accustomed. These locations include the Nisqually River and the marine shoreline area north of the Nisqually Reach. The fish and shellfish resources that sustain the Tribe's fishing rights depend on clean habitat, as free as possible from contaminants and pollutants.

It is our understanding that, when fully operational, the proposed facility will result in substantially increased train traffic along the BNSF railroad mainline running north from its Nisqually River crossing to the proposed terminal. Our fishing areas and the habitat areas upon which our fish resources depend are located directly adjacent to this route of travel. The EIS should:

1. Thoroughly describe the treaty fishing rights of the Nisqually Indian Tribe, specifically, and other Indian Tribes with fishing locations located along the railroad line of travel.

2. Thoroughly document the possible and likely amount of increased train traffic on this coastal route, and more broadly upon the entire route of travel. Infrequently, BNSF has experienced derailment and spills along its Puget Sound marine shoreline route. The EIS should evaluate the increased incidence risk associated with increased train traffic.

3. Thoroughly evaluate the risk of accident associated with the increase of train traffic and the possible direct impacts of such accidents. As part of the analysis of accident risk the EIS also should identify the age and current condition of the BNSF mainline, since we know that it was constructed approximately 100 years ago.

The risks we immediately identify are railroad accidents that spill coal and other materials into water areas and train accidents that result in traffic shutdowns on the track itself and the resulting loss of fishing access to our fishing sites.

4. Thoroughly evaluate the risk of environmental and habitat damage, both short term and long term, that might result from the accidents described. In particular we would like to know more about the impact of substantial amounts of coal being dumped into the Nisqually River or Puget Sound.

Also, when evaluating habitat risk, the Nisqually Tribe is concerned about the entire line of travel within Puget Sound and the construction of a substantial export facility at Cherry Point in Whatcom County . The existing BNSF mainline is frequently immediately Puget Sound and steep marine bluffs. It is not unusual that train traffic on the line is delayed by landslides. We request that all associated impacts with this project be evaluated for its impacts on habitat, human health, traffic, and our treaty rights.

Mitigation

Once the possible and likely risks and impacts are evaluated, the agencies should address possible mitigation of the associated risks, including whether or not the risks and impacts can be adequately mitigated or must simply be avoided. The Nisqually Indian Tribe expects that it will be involved in these mitigation discussions.

In particular the Tribe requests that the agencies evaluate as possible mitigation the rebuilding of the route of rail travel along Puget Sound or the relocation of the route of travel away from Puget Sound.

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Cultural Resources

The agencies need to acknowledge that the Nisqually Indian Tribe, and other Tribes along the route of travel, may have valuable cultural resources at risk from increased train traffic and associated construction. These resources may be archaeological sites located or potentially located in the line of travel and construction, or cultural activities that may be negatively impacted by the increased train traffic.

As an element of federal law, the Army Corps of Engineers must conduct Section 106 consultation with affected Tribes, including the Nisqually Tribe, either as part of the EIS process or separately. That consultation should be initiated as soon as practical after the magnitude of possible and likely impacts are described in the EIS.

Global Issues

We understand that the coal proposed for shipment from the Gateway Pacific Terminal will be exported and, ultimately, burned for electricity generation. While increased airborne carbon dioxide associated with coal generation is not an immediate threat to the treaty rights and cultural resources of the Nisqually Tribe, we believe that it is a long-term threat that must be evaluated thoroughly as part of the EIS process.

Please do not hesitate to contact me if the Nisqually Tribe can be of any further assistance in the scoping of the EIS for the proposed project.

Sincerely,



David A. Troutt
Natural Resources Director