



THE TULALIP TRIBES

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The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and bands signatory to the Treaty of Point Elliot

January 18, 2013

U.S. Army Corps of Engineers
Seattle District Regulatory Branch
Care of GPT/BNSF Custer Spur EIS Co-Lead Agencies
1100 112th Avenue NE. Suite 400
Bellevue, WA 98004
www.eisgatewaypacificwa.gov

RE: Comments of the Tulalip Tribes regarding EIS Scoping for the Gateway Pacific Terminal Project

To Whom It May Concern:

The Tulalip Tribes is a federally recognized Indian tribe comprised of the Snohomish, Snoqualmie, Skykomish people and allied bands who reside on the Tulalip Indian Reservation. The Reservation was established pursuant to the Treaty of Point Elliot of January 22, 1855 (12 Stat. 927) and by Executive Order of December 23, 1873. In the Treaty of Point Elliot, The Tulalip Tribes reserved their rights to exercise traditional activities such as fishing, shellfish harvesting, hunting, and gathering in their historical grounds. In furtherance of protecting their treaty rights, the Tulalip Tribes exercise co-management authorities over natural resources in their traditional areas with federal, state, and local governments.

The proposed Gateway Pacific Terminal project would transport annually 53 million tons of coal from Utah and Wyoming to Cherry Point, Washington. It would require filling 162 acres of wetlands, impacting 1,280 feet of stream channels and constructing a new 2,890 foot long wharf/trestle. The project would result in an additional 18 train trips per day near the Tulalip Reservation and 974 Capesize ships per year through the Tulalip Tribes Usual and Accustomed fishing area.

The proposed Gateway Pacific Terminal project poses substantial impacts to: the exercise of tribal treaty rights; a known archeological and burial site; regional and global air quality issues; the health and safety of the residents of the Tulalip Reservation; and the existing economic enterprises and future economic growth for the Tulalip Reservation. The multitudes of adverse impacts from this project are not limited to the terminal site. All of these impacts must be included in the scope of the environmental impact study (EIS) for the project.

Treaty Rights

Direct Impacts to Tribal Fishing

This project would cause direct impacts to Tribal fishing opportunities due to the increase in shipping traffic through the tribes usual and accustomed fishing areas. The scope of the EIS must fully include an

analysis of these impacts. Fishermen are unable to fish in the path of the shipping vessels due to the risk of accidents. Once fishing nets are set, fishing vessels have little ability to move out of the way of the large cargo vessels which also have little maneuvering ability. Tribal fishermen are already severely impacted by the loss of fishing opportunity due to the current level of shipping traffic, impacts from docks, piers, anchorage areas, pilings, buoys and other obstacles interfering with a fisherman's ability to fish.

Tribal fishing gear is damaged every year due to vessels running over nets and/or pot lines. Damaging fishing nets causes the fisherman to lose valuable fishing opportunities until the net can be repaired or replaced. Ships running over crab and shrimp pot lines can cut through the lines. Once the lines are cut, the fishermen are unable to retrieve their gear causing them to miss fishing opportunity until the pots can be replaced. To make things worse, those pots continue to capture and kill shellfish for several years or until the gear can be recovered through the derelict gear program currently managed by the Northwest Straits Commission. The loss of fishing opportunity is a direct violation of the tribe's right to fish under the Treaty of Point Elliott and cannot be permitted without specific and express consent of Congress. (*Muckleshoot vs. Hall* 698 F. Supp. 1504, (W.D.1988).

Impacts From Marine Vessel Operations

Capesize cargo vessels pose a number of risks to fish and wildlife resources, several of which are listed under the Endangered Species Act and/or protected under the Marine Mammal Protection Act. The vessels are larger than the maximum size oil tanker that can legally travel east of Sequim due to their size and lack of maneuverability. The cargo vessels are typically single haul and contain large quantities of fuel oil as well as their main cargo. The environmental impacts study should look at the potential impact of spilling large quantities of coal and fuel oil into marine waters, including the impact to pH levels around the spill and how the change in pH may affect marine species. The study should also identify if and how the coal could be recovered from marine waters in the case of a large spill. The study should include risks from marine accidents involving collisions with rocky reefs, ship collisions, and ship-pier collisions such as the one that happened on December 7, 2012 at the Westshore Terminals just across the border in British Columbia.

The increased vessel traffic would also increase the impacts to marine mammals due to vessel movement and use of sonar. The added noise from the vessels and use of sonar would adversely affect communication between marine mammals and their echolocation abilities, which in turn affect their ability to navigate. Analysis of the current impact caused by vessel traffic is needed, as well as an assessment of additional impacts that would be caused by the proposed project and how much of an impact should be legally allowed under the Marine Mammal Protection Act and the Endangered Species Act.

Ships this size also have very large ballast tanks used to help stabilize the vessels during transit. Operations of the ballast tanks also frequently transport marine species from port to port creating the potential for introducing invasive species to the Salish Sea and the outer coasts of Washington and British Columbia. The ballast water also has the ability to transport pathogens that can affect fish and wildlife to areas where the pathogens do not currently exist. The environmental analysis should analyze these potential impacts, and methods to prevent the transportation of invasive species and pathogens to waters of the United States and Canada.

Port Impacts

The proposal includes development of a new 2,890 foot long pier/wharf creating over water coverage affecting how fish migrate along the shoreline, marine vegetation growth, and herring and other forage

fish spawning activities. Herring populations in the region have been declining for several years. The depressed populations of herring and other forage fish species are also a factor in the decline of salmon and whale populations. With the listing of the Puget Sound Chinook Salmon, Hood Canal Chum Salmon, Puget Sound Steelhead, and the Southern Resident Killer Whale under the Endangered Species Act, further reduction in herring spawning areas should not be allowed. Rebuilding the populations of forage fish species is necessary for the rebuilding of the salmon and whale populations. The marine areas shaded by the pier also create areas for predator species to hide, increasing predation on smaller species.

Toxic chemicals or metals leaching from the bottom paints on the ships and any coal spillage in the water would degrade water quality and impact the health of the fish. Besides the actual coal, coal contains several contaminants typically including sulfur, mercury, uranium, thorium, arsenic, and other heavy metals.

The environmental study must address the impacts to forage fish spawning in particular herring and increased predation on juvenile fish migrating past the proposed pier location; and the effects of coal spillage and bottom paints on all marine species in the area. The study must also review and assess the success rates for mitigation projects for these kinds of impacts, which we believe are either non-existent or not effective.

The proposed development for the upland facilities includes impacting 162 acres of wetland and 1,280 feet of stream channel. The area surrounding the terminal is predominantly wetlands, which must be protected. A vast majority of the wetlands in Western Washington have been lost, which has resulted in a huge loss of habitat for fish and wildlife species, reducing groundwater recharge, and other hydrologic processes. Even with the no-net-loss policies of the state and federal agencies, wetlands have continued to disappear at an alarming rate. Any mitigation should be done using proven techniques and a mitigation ratio that helps to insure success. Using mitigation ratios of 1 to 1 rarely creates for a successful project. A new review of mitigation projects for similar types of wetlands should be conducted to evaluate what mitigation ratios should be used to assure success.

Stream channel mitigation projects for fish bearing streams have been more successful in recent years, but there are several issues that must be addressed for rerouting streams. The channels must be designed in a way that prevents the loss of water through the bottom of the channel; they can handle peak annual flows including the projected increase in peak flows due to climate change; provides proper sinuosity rather than just a straight channel; ensures proper use and spacing of large wood to help create and maintain proper stream channel morphology; allows fish migration through culverts both upstream and downstream for all life stages using the stream simulation model; and provides for suitable vegetative buffers to provide shade and future recruitment of large wood into the stream channel.

Rail Impacts

The proposed project would average eighteen train trips per day, including nine full trains from Utah and Wyoming and 9 empty trains returning to Utah and Wyoming. Most of the route the trains would be traveling through in Washington is along waterways critical for salmon recovery purposes. The route would follow the Columbia River from the Tri-City area to Longview, north to Tacoma, along the Puget Sound Shoreline from Tacoma to Marysville, then north to Samish Bay where the rail line follows the Samish Bay and Bellingham bay shorelines to Cherry Point. On the return route, the empty trains again follow the Bellingham Bay and Samish Bay shorelines, then south to Marysville where the rail then crosses the mouth of the Snohomish River into Everett and primarily follows the Snohomish River, Skykomish River, South Fork Skykomish River, and Tye River to Steven's Pass, then down along

Nason Creek, Skinney Creek, Wenatchee River, Columbia River, to the Colockum Wildlife Area, and east to Spokane, then finally south to the Tri-Cities area.

There are several train derailments every year in this county. Last year there were three derailments of coal trains during the first week of July with one of them in Eastern Washington. Last month there was a derailment of a cargo train in Everett caused by a mudslide (December, 2012). The rail lines between Everett and Mukilteo have been closed for most of the last month due to landslide activity. The environmental study needs to assess impacts of spilling several rail car loads of coal into a river or into Puget Sound due to a derailment. The study needs to address the effects of the toxic contaminants in coal and the effects of the coal lowering the pH of the water body.

Besides the train derailments, the study should address the coal dust blown out of the rail cars while in transit. Although the full rail cars may be sealed to prevent coal dust from blowing out of the cars, the remaining coal dust in the empty unsealed cars would be a source of coal dust during the return trip. This coal dust would be deposited along the rail lines and beyond, and affect the health and purity of treaty-reserved resources gathered by Tulalip Tribal members for nutritional, medicinal and cultural purposes.

The increase in coal burning in China that would be allowed by increasing the available supply of coal would also increase the amount of acid rain in Washington State. The emissions from coal burning in China are carried by the wind currents over the Pacific Ocean and arrive over Washington in 10 days on average. The environmental study should assess the impacts of the acid rain affecting the pH of Washington's rivers, Puget Sound and the state's coastal shorelines.

Tribal Burial Grounds

The proposed project would directly impact a known burial site for the Lummi Tribe. This site had been used as a cemetery for the tribe for thousands of years. This site must be protected. The burial site must not be disturbed by allowing any construction activities over or adjacent to the site. For the tribes, allowing this cemetery to be used as an industrial site is comparable to allowing the Arlington National Cemetery to be developed as an industrial site. Hundreds or thousands of graves are likely to be buried there with their descendants belonging to the Lummi and other Indian tribes and Canadian First Nations today. Indian tribal burial sites are protected under Washington State Law, for Indian Graves and Records, Chapter 27.44 RCW.

There is also a high likelihood of buried artifacts in the area around the burial sites that should be protected under the National Historic Preservation Act, 16 USC 470 et.seq.,

Air Quality

If developed, the project will cause impacts to air quality at the local, regional and global levels. The emissions from burning coal will cause global impacts accelerating climate change as well as local air quality impacts to Pacific Northwest of the United States. According to a University of Washington study, on average it only takes 10 days for the emissions from coal fired electric plants to reach the west coast of Washington from China.

Coal dust will be an issue from the coal mines to Cherry Point Washington and on to China and other ports of delivery. Besides the coal dust, the project would cause an increase of exhaust emissions from

locomotive engines and cargo ship engines. These emissions sources are mobile and will add to the air quality problems as they pass through or dock at areas with air quality problems currently. The Seattle and Bellingham areas are highly regulated to try and keep the air pollution levels below federal and state limits.

An air quality study needs to be conducted to assess the impacts from coal dust, engine exhaust, and the emissions from burning the coal in Asian countries. Households along the rail routes already receive a large amount of coal dust in their homes on a daily basis. The air quality study should also assess the effects of the coal dust and engine exhaust on human health for those living close to the rail lines. The study also needs to address the affects of sulfur, mercury and other heavy metals that are common contaminants included with the coal.

Tulalip Reservation and Surrounding Community Impacts

The Tulalip Reservation and the City of Marysville are separated by Interstate 5 with only 4 access points across Interstate 5 and 3 of them providing access to the freeway. The coal trains pass just to the east of the Tulalip Reservation through Marysville.. According to a 2008 Washington State Department of Transportation study, the rail line from Everett to Vancouver B.C. has an efficient capacity of 18 trains per day. The study also shows that in 2008 there were 15 average daily train trips per day. The proposed new port facility would create the need for an additional 18 train trips per day that would more than double the existing use and be nearly double the efficient capacity of the rail lines. This proposal would cause most of the rail lines adjoining the Tulalip Reservation to exceed the efficient capacity by 15 trains per day creating significant adverse impacts to the Reservation and adjoining communities.

The coal trains would each be 1.2 – 1.5 miles in length. When a coal train passes through Marysville, it stops all east – west traffic for at least 7 minutes. The rail line is only about 2 blocks from Interstate 5 paralleling the freeway with all crossing at grade. During peak traffic hours, when a train passes through Marysville, the traffic backs up onto Interstate – 5 and for several blocks on city and reservation roads. With an increase of train traffic to 33 or more average train trips per day, traffic back-ups will cause a severe impact on businesses within the reservation and the City of Marysville.

The west part of Marysville, the Tulalip Reservation and areas north of the reservation, depend on emergency services provided from the east side of the railroad tracks. With an average of 33 train trips per day, there is a high likelihood of the trains causing a substantial delay of emergency fire and medical response across the tracks. These delays would cause substantial risks to loss of life and property

People trying to avoid the traffic impacts will do business at other locations or via the internet. That will cause many local businesses to cut jobs or go out of business. The Tulalip Tribes is the 3rd largest employer in Snohomish County, only behind Boeing and the U.S. Navy. A large reduction in customers could cause the tribes to greatly reduce employment. Several cities along the rail line have similar situations. The jobs lost due to the proposed project would greatly out number the jobs created by it.

With much of the rail lines being single track, trains going in one direction oftentimes have to stop and wait in double rail sections, to allow trains to pass going in the opposite direction. These rail lines have a mixed use of cargo and passenger trains and as the trips per day increases, so will the delays. This would cause a reduction in the use of commuter train occupancy and cause an increase to traffic problems. The Seattle area has one of the worst traffic congestion problems in the country. This region needs to improve mass transit to reduce congestion, not discourage people from using mass transit.

The environmental impact study should quantify the potential for the following impacts all along the rail route: increased loss of life and property on an annual basis; job losses; increased traffic congestion; and impacts to mass transit operations and ridership.

Cumulative Impacts

There are several other coal port proposals located along the west coast of Washington, Oregon and British Columbia. This Environmental Impact Statement should address the cumulative impacts for all the projects. Their would be overlapping impacts to air quality, water quality, rail transport, traffic, and treaty rights caused by the various projects. A good example is that the Gateway Pacific Terminals would more than double the existing rail traffic traveling by the Tulalip Reservation through the City of Marysville. Combined with the proposed expansion of the British Columbia Ports would increase rail usage through Marysville even more. The proposed projects in Longview, Port of Grays Harbor, Port of St. Helens, Port of Morrow, and the Port of Coos Bay, combined would increase the amount of train traffic along the lower Columbia River by 40 trains per day. This stretch of rail is already near its efficient capacity and an additional 40 trains per day would bring the total to nearly double what the efficient capacity is, according to the Washington State Transportation study of 2008.

The Salish Sea is the home of the Tulalip Tribes and many other Salish tribes. It is a sensitive ecosystem that is in serious jeopardy based on current shoreline development pressures, tanker and cargo ship traffic, habitat loss and pollution. The Endangered Species Act listing of Chinook salmon and Southern Resident Killer Whales is testament to an ecosystem in serious trouble. Constructing a new coal terminal of this magnitude on the shores of the Salish Sea with Capesize ships would have substantial, additional negative impacts on this ecosystem, and the fish, animals and plants on which Tulalip culture and way of life depends. These cumulative impacts must be taken into account.

Closing Remarks

The proposed Gateway Pacific Terminal, if permitted, would cause multiple negative impacts to communities all along the rail routes from the coal pits to the new terminal. It would also allow for increased impacts to the Pacific Northwest and to global climate change from the increased burning of coal in China and other Asian Countries. It would also remove a portion of the Tribes' usual and accustomed fishing area from being available for treaty fishing, which would be a clear violation of our treaty rights. All these issues need to be addressed fully in the environmental impact statement, as well as the cumulative impacts of other currently proposed West Coast coal terminals. The Tulalip Tribes are strongly opposed to this project due to the impacts that it would cause locally, regionally and globally.

Thank you for your consideration of these comments.

Sincerely yours,



Melvin R. Sheldon, Jr.
Chairman