



July 14, 2014

Oregon Transportation Commission
355 Capitol Street NE, MS # 11
Salem, OR 97301-3871

RE: ConnectOregon V subsidies for coal export and crude-by-rail projects.

Dear Oregon Transportation Commissioners,

The undersigned organizations (collectively, “the Coalition”) request that the Oregon Transportation Commission (Commission) deny ConnectOregon V grant Applications 1M0352, 1M0294, and 1R0350. The Coalition opposes using 7 million dollars of Oregon lottery bonds—16.7% of the available ConnectOregon V funds—to subsidize coal export and crude-by-rail projects that will jeopardize the Columbia River and Oregon communities. Please consider this letter, the enclosed documents, and the letter that Columbia Riverkeeper hand delivered to the Commission on June 20, 2013, when deciding whether to subsidize coal export and crude-by-rail in Oregon.

The Coalition is deeply involved in monitoring and responding to coal and crude oil shipping proposals in Oregon and Washington. Some of the Coalition’s individual members boat, fish, and swim in the Columbia River nearby the Port Westward dock, and other members live and work in downtown Rainier. Moreover, the Coalition’s members throughout the Northwest would be negatively impacted by the increased coal and crude oil shipping that the

proposed projects would facilitate.

Collectively, the projects proposed in Applications 1M0352, 1M0294, and 1R0350 seek a 7 million dollar subsidy to rebuild and expand the Port Westward Beaver dock and expand rail access through downtown Rainer, Oregon, in aid of Ambre Energy's "Morrow Pacific" coal export scheme and Global Partners' crude-by-rail shipping terminal. The dock expansion and reconstruction projects proposed in Applications 1M0352 and 1M0294 would create two berths where Panamax-class vessels could receive coal and crude oil. Global Partners (and its subsidiary, Columbia Pacific Bio-Refinery) and Ambre Energy (through its subsidiary, Pacific Transloading) are the only beneficiaries of these projects specifically identified in Applications 1M0352 and 1M0294. The rail modification project proposed in Application 1R0350 is intended to increase the speed and number of crude oil unit trains traveling through downtown Rainer, Oregon, to Global Partners' crude-by-rail shipping terminal at the Port Westward dock.

Either of the dock expansion projects proposed in Applications 1M0352 and 1M0294 would enable both coal and crude oil shipping. While Application 1M0352 (relating to Berth 1) is backed by Global Partners and Application 1M0294 (relating to Berth 2) is backed by Ambre Energy, building either one of these berths would allow both Ambre Energy *and* Global Partners to ship coal *and* crude oil from the Port Westward dock. First, either project would give the Port Westward dock the capacity—which it currently lacks—to berth a Panamax-class vessel. Second, the use of one berth by Global Partners or Ambre Energy would not preclude the other company from loading coal or oil at the same berth. As explained in the applications, the anticipated usage rate for both berths is just 33%. Application 1M0294 at Question 33; Application 1M0352 at Question 33. This means that Global Partners' crude oil terminal and Ambre Energy's coal transloading operation could both operate at full capacity using either one of the ship berths; and even then, that one berth would be in use just 66 percent of the time. Additionally, an article in the coal industry publication *The Coal and Energy Report* on June 20, 2014, noted that *both* of the proposed dock expansion projects "would make shipping coal easier out of Oregon." Voting to approve Application 1M0352 *or* Application 1M0294 is voting to subsidize coal export *and* crude-by-rail.

The A-street rail project described in Application 1R0350 would facilitate increased crude-by-rail shipments to Global Partners' crude oil terminal. Global Partners is seeking to massively expand its crude-by-rail terminal at Port Westward to handle up to 1.84 billion gallons per year,¹ and has received authorization to increase the number of unit trains servicing the crude oil terminal to 38 unit trains per month.² The A-street rail project is a pre-requisite to expanding

¹ Exh. 1. Global Partners LP, Application to Oregon DEQ for a Standard Air Contaminant Discharge Permit 1 (Aug. 23, 2013) (Global requests authorization to increase its throughput of crude oil to 1.84 billion gallons per year.).

² Exh. 2. Port of St. Helens, Resolution No. 2013-81 (increasing the number of oil trains that Global Partners is allowed to bring onto the Port of St. Helens' rail lead at Port Westward).

Global Partners' crude-by-rail project.³ According to the Portland and Western Railroad, the A-line through Rainer cannot currently accommodate more than 24 unit trains per month, but increasing rail speed to 25 mph—as contemplated by Application 1R0350—would facilitate increased rail traffic.⁴ Because the proposed rail project would allow Global Partners to increase its crude oil shipping capacity substantially, this project would subsidize and facilitate crude oil shipping.

Additionally, the A-street rail project described in Application 1R0350 could create more safety problems than it would solve. The A-street rail line running through downtown Rainer has always presented legitimate safety concerns. But there is no indication in Application 1R0350 that the previous frequency and speed of train traffic through downtown Rainer—prior to Global Partners' arrival at Port Westward—actually resulted in accidents and safety incidents. Similarly, there is no real explanation of why the potential safety benefit of improving a few railroad crossings outweighs the risks inherent in increasing the speed, number, and explosiveness of unit trains traveling through downtown Rainer. The Rail Advisory Committee's report on this proposal states: “this is a fix, not a solution.” The Coalition urges the Commission to find a solution to the rail safety issues in Rainer that is thoughtfully designed to protect the residents of Rainer from dangerous crude oil unit trains.

Finally, approving any of the three applications would conflict with Oregon's goal of halting and reversing the negative impacts of climate change by decreasing greenhouse gas emissions. Oregon has set aggressive goals to achieve greenhouse gas emissions of 10% below 1990 levels by 2020, and 75% below 1990 levels by 2050. *See* Oregon House Bill 3543. To reach these goals, Oregon also created the Oregon Global Warming Commission, charged with researching and recommending ways to reduce greenhouse gas emissions. The greenhouse gas emissions from Ambre Energy's coal and Global Partners' crude oil will be the same regardless of where those fuels are ultimately burned. Oregon has taken decisive, and in some cases costly, steps to become a leader in combating climate change and reducing dependence on fossil fuels. Subsidizing and facilitating the shipping and extraction of fuels that contribute to climate change severely undermines Oregon's attempts to reduce its carbon footprint.

I. The Commission should not subsidize coal export and crude-by-rail infrastructure because the proposals do not comply with Oregon's regulations governing ConnectOregon funding.

Division 35 of the Oregon Administrative Rules (OAR) provides the criteria for determining whether projects that apply to the ConnectOregon program receive public money. The Commission can and should decide not to fund the projects proposed in Applications

³ *Id.*

⁴ *Id.* at 1, 2.

1M0352, 1M0294, and 1R0350 because these projects do not meet the criteria.

1. The Berth 1 and Berth 2 dock expansion projects are not eligible to receive ConnectOregon funds.

The dock construction projects described in Applications 1M0352 and 1M0294 are not eligible for ConnectOregon funds because these projects are not “feasible” within the meaning of OAR 721-035-0050(3)(f). OAR 721-035-0050(3) mandates that, for a project to be eligible for ConnectOregon funding, the project must meet several criteria. One of those mandatory criteria is that the project is “feasible,” based on the estimated cost of the project, the project’s projected schedule, and whether all the necessary permits can be obtained within that schedule. OAR 721-035-0050(3)(f). Because the dock projects cannot be completed within the budgets and schedules described in the applications, and because the projects cannot receive all necessary permits within the project schedules, these projects are not eligible for ConnectOregon funds.

The dock expansion projects are not feasible within the meaning of OAR 721-035-0050(3)(f) because the necessary permits cannot be obtained within the project schedules described in the applications. The applications’ schedules state that construction on Berth 1 will begin on August 28, 2014, and that construction on Berth 2 will commence shortly afterwards on September 1, 2014. *See* Application 1M0294 at Question 24; *see also* Application 1M0352 at Question 24. The U.S. Army Corps of Engineers (Corps) must issue permits for both projects under Section 10 of the Rivers and Harbors Act before construction can commence. 33 U.S.C. § 403. However, before the Corps decides whether to issue those permits, the Corps must prepare an analysis of the impacts of dock construction and coal and crude oil shipping on the Columbia River Estuary under the National Environmental Policy Act (NEPA).⁵ Additionally, the National Marine Fisheries Service (NMFS) must prepare Biological Opinions detailing the impacts of coal and crude oil shipping on endangered salmon and steelhead. The scope and form of the Corps’ NEPA analyses have not yet been determined, and this issue is the subject of intense public scrutiny and debate. The Coalition’s member organizations have forcefully asserted that the Corps must prepare an in-depth Environmental Impact Statement (EIS) to fully analyze the environmental consequences of the dock expansion projects.⁶ Federally-mandated environmental reviews under NEPA and the Endangered Species Act may take a year or more to complete—especially if the Corps prepares an EIS for the dock expansion projects—and there is no indication that the Corps or NMFS has begun either review in earnest. It is extremely unlikely that these reviews will be complete by September of 2014 when construction is scheduled to commence. Without a legally sufficient NEPA document (arguably, an EIS) and Biological Opinions, the Corps cannot issue permits for either dock expansion project.

⁵ Application 1M0294 (relating to Berth 2) incorrectly asserts that *no NEPA review of any kind* is necessary prior to the issuance of the federal permit required for dock construction. *See* Application 1M0294 at Question 25(a)–(c).

⁶ Exh. 3. Columbia Riverkeeper’s Letter to the Corps Explaining the Need for an EIS on the Port Westward Dock Expansions (April 4, 2014).

Accordingly, the dock expansion projects are not “feasible” within the meaning of OAR 721-035-0050(3)(f)—and therefore not eligible for ConnectOregon funds—because the necessary permits cannot be obtained before this coming September, as proposed in the applications’ schedules.

Because the dock expansion applications overlook the importance of the NEPA analysis and the need for Biological Opinions, the projects’ construction schedules and budgets are also likely incorrect. For these reasons as well, the dock construction projects are not feasible within the meaning of OAR 721-035-0050(3)(f). As described above, the Corps cannot issue the necessary Rivers and Harbors Act permits authorizing the dock expansion projects by this September, so the construction schedules for both dock projects will likely be delayed by a year or more. And as the applicant for, and beneficiaries of, these proposed projects, the Port of St. Helens, Ambre Energy, and Global Partners will likely be required to fund the NEPA analyses for these projects. Neither application appears to budget for the potentially serious expense of researching and preparing an EIS, if that level of analysis is ultimately required. Because the schedules and budgets in the project applications are likely significantly incorrect, these dock expansion projects are not feasible or eligible for ConnectOregon funds. OAR 721-035-0050(3).

2. The Commission should deny all three applications based on the criteria in OAR 721-035-0060(8).

OAR 721-035-0060(8)(a)–(h) contains eight factors that the Commission must consider when deciding whether to commit ConnectOregon funds to a proposed project. The following subsections explain that the projects proposed in Applications 1M0352, 1M0294, and 1R0350—and the coal and crude-by-rail shipping facilitated by those projects—conflict with the Commission’s criteria.

a. Crude-by-rail and coal export projects will decrease the efficiency of Oregon’s transportation system.

Building infrastructure that precipitates an increase in the number of unit trains carrying crude oil through Oregon communities would do more harm than good for Oregon’s transportation system and citizens. The Commission’s approval criteria at OAR 721-035-0060(8)(a) and (c) ask whether a proposal will “reduce[] transportation costs for Oregon businesses,” “improve[] access to jobs” and labor, and “measurably improve” the efficiency of Oregon’s transportation system. While the three proposals would improve infrastructure for shipping crude oil, Oregon’s transportation system as a whole would almost certainly suffer. Increasing the frequency of crude oil unit train traffic through Eastern Oregon, the Columbia River Gorge, Portland, and Columbia County could cause delays for other rail users, and would certainly delay anyone trying to cross the railroad tracks. Ultimately, increasing crude oil unit train traffic will increase transportation costs for many Oregon businesses that are subject to delays at track crossings, impair Oregon workers from accessing their jobs, and measurably

decrease the overall efficiency of Oregon’s transportation system for everyone except Global Partners. Because the three applications would not improve Oregon’s transportation system, these proposals conflict with the Commission’s approval criteria at OAR 721-035-0060(8)(a) and (c).

b. The applications ignore the economic costs that coal export and crude-by-rail will place on Oregon.

Applications 1M0352, 1M0294, and 1R0350 ignore the costs that coal export and crude-by-rail projects would place on Oregon, and the Commission should not approve these applications based on this insufficient information. Under OAR 721-035-0060(8)(b), one of the Commission’s decision criteria is whether a proposed project would “result[] in an economic benefit to this state.” Because the applications describe the economic benefits of coal and crude-by-rail and ignore the costs, there is no true analysis of whether these projects will result in an economic benefit to Oregon. And the costs are real, and likely to be extremely substantial. A report prepared about Ambre Energy’s Morrow Pacific project demonstrates that coal export entails significant financial risks for Oregon,⁷ well in excess of the \$212 million dollars that Ambre Energy promises to invest. Additionally, increasing coal and crude shipping in Oregon will require first responders in communities all along the Columbia River to invest in new training and materials to respond to new threats and emergencies, specifically fires and explosions resulting from crude oil train accidents. Increased unit train traffic will also decrease worker productivity and business efficiency in every community where unit trains block rail crossings. In the event of an oil spill, fire, explosion, or train collision, Oregon’s state and local agencies would be obliged to invest significant resources in emergency response and clean-up. And the effects of a serious spill—or the mere presence of coal and crude oil facilities—could be detrimental to Oregon’s important fishing, tourism, and outdoor recreation industries. Without a realistic assessment of the costs of coal export and crude-by-rail projects, the Commission cannot conclude that these projects would provide an “economic benefit to this state” within the meaning of OAR 721-035-0060(8)(b). Accordingly, the Commission should not approve these proposals.

c. ConnectOregon funds should not subsidize coal export and crude-by-rail projects.

The Commission should not subsidize the proposed coal export and crude by rail projects because Ambre Energy and Global Partners should pay their own way. Under OAR 721-035-0060(8)(d) and (h), the Commission must consider whether the cost of the proposed project could be borne by a source other than ConnectOregon funds, and whether a grant or a loan is requested. Ambre Energy and Global Partners—the corporations that will reap the benefits—

⁷ Exh. 4, Noah Enelow, *Economic Risks of the Morrow Pacific Project: Livelihood, Habitat, and Recreation* (2014).

should bear the cost of all three proposed projects. If built, the profits from these ventures could be substantial, but none of the applications requests a loan instead of a subsidy. These giant corporations clearly should not need Oregon lottery dollars. Global Partners, a Fortune 200 company, bought the inoperable Columbia Pacific Bio-Refinery facility for 95.5 million dollars and intends to invest an additional “\$50 to \$70 million.” See Application 1M0352 at Question 21. Ambre Energy “is planning on investing \$212 million” on its Morrow Pacific project. See Application 1M0294 at Question 21. Obviously, these corporations could bear the burden of paying for their own infrastructure. If these coal and crude shipping proposals were operating so close to the profit margin that two or three million dollars would impact their feasibility, neither of the proposals should receive state funding because they are too financially insecure to be feasible. See OAR 721-035-0060(8)(d).

d. The proposed dock expansion projects are not construction ready.

According to OAR 721-035-0060(8)(e), the Commission should not approve the dock expansion projects because those projects are not “ready for construction” or “ready for implementation.” As explained in Sections I.1 and I.4 of this letter, the dock expansion projects are not ready for construction or implementation because the necessary permits have not been issued and are not likely to be issued any time soon.

3. Denial of Ambre Energy’s Morrow Pacific coal export project would make Application 1M0294 ineligible for ConnectOregon funds.

After Application 1M0294 for expanding Berth 2 was submitted on November 25, 2013, it became apparent that the Oregon Department of State Lands (DSL) and the Oregon Department of Environmental Quality (DEQ) may be poised to deny regulatory permits and/or lease approval necessary for Ambre Energy’s Morrow Pacific coal export project. If the Morrow Pacific project is denied, the required matching funds and the necessary business commitment for Application 1M0294 will evaporate, making the project ineligible for ConnectOregon funding.

Oregon appears prepared to deny approval for the Morrow Pacific coal export project. Governor Kitzhaber recently stated that “it is time [] once and for all to say no to coal exports from the Pacific Northwest.” DSL, an Oregon agency with the authority to implement the Governor’s clear directive against coal export, appears prepared to deny a “removal/fill” permit that will prohibit Ambre Energy from constructing a dock in the Columbia River at the Port of Morrow. DSL may also refuse to lease submerged lands at Port Westward for Ambre Energy to operate and store its over-water coal transloader.⁸ DEQ, another Oregon agency with extensive

⁸ Exh. 5. Letter from DSL to the Port of St. Helens Regarding the Port Westward Dock, pp. 2, 3 (June 6, 2014) (The letter explains that the Port of St. Helens will need to re-negotiate its lease with DSL in order to accommodate Ambre Energy’s floating coal transloader that would be tethered to the Port Westward Dock.).

authority over the Morrow Pacific project, is in the early stages of deciding whether to certify the project under Section 401 of the Clean Water Act.⁹ If DSL and DEQ deny any of these necessary approvals, the proposed Morrow Pacific coal export project would be effectively terminated.

Without Ambre Energy or the Morrow Pacific project, the berth 2 expansion described in Application 1M0294 will be ineligible for a ConnectOregon grant because there will be no matching funds. All applicants must contribute no less than twenty percent of the requested ConnectOregon funds. OAR 721-035-0070(4)(a)(B). Application 1M0294 states that the applicant will provide a matching contribution of \$50,000, and an over-match of 2.5 million dollars. *See* Application 1M0294 at Question 19. Importantly, the application explains that Pacific Transloading (a wholly-owned subsidiary of Ambre Energy incorporated for the sole purpose of operating coal transloading at Port Westward) “will provide the Port with funds for the match.” *See* Application 1M0294 at Question 21. It would be completely illogical for a coal company to spend 3 million dollars on a dock it is not allowed to use, and there is no indication that the Port of St. Helens is willing or able contribute 3 million dollars if and when Ambre Energy is forced to abandon the Morrow Pacific project. Because Oregon’s denial of the Morrow Pacific project would almost certainly cause Ambre Energy to abandon this coal export scheme, Ambre Energy will not provide the required \$50,000 to match twenty percent of the two million dollar request, bringing Application 1M0294 out of compliance with the requirements of OAR 721-035-0070(4)(a)(B). Oregon’s denial of the Morrow Pacific project would also cause Ambre Energy to withdraw its pledged over-match of 2.5 million dollars, leaving a 3 million dollar short-fall in the proposal’s budget, making the project infeasible and ineligible under OAR 721-035-0050(3)(f). Within the next few months, the required matching funds for the reconstruction of Berth 2 will likely disappear along with the Morrow Pacific project, bringing Application 1M0294 out of compliance with OAR 721-035-0070(4)(a)(B).

Without Ambre Energy’s involvement, Application 1M0294 will also be unable to demonstrate desire and support by the one business that the project was designed to serve. According to OAR 731-035-0040, all applications must document the “desire for and support of the Project from the businesses and entities to be served by the Project.” The only business listed in Application 1M0294 as intending to locate in Oregon as a result of this project—and the only business submitting a letter of intent to the applicant—is Ambre Energy, Pacific Transloading’s parent corporation. *See* Application 1M0294 at Question 39. If and when Oregon denies the Morrow Pacific coal export project, the “desire for and support of the Project from the businesses and entities to be served by the Project” will disappear. *See* OAR 731-035-0040. Accordingly, the Commission should not approve Application 1M0294.

4. Subsidizing coal export and crude-by-rail projects is not the best use for

⁹ Exh. 6. Letter from DEQ and DSL to Oregon Public Ports Association, p. 1 (June 11, 2014) (Letter explains that the Morrow Pacific project requires a Clean Water Act Section 401 Certification from DEQ.).

ConnectOregon V funds.

A few examples of the 67 ConnectOregon V proposals that were *not* recommended for funding demonstrate that there are far better uses for Oregon lottery dollars than subsidizing coal export and crude-by-rail projects. Application 3T0282 requested a mere \$137,600 to purchase replacement buses so that Curry County could maintain its aging and important public transportation system. Applications 1B0318 and 1B0323 would have bridged important obstacles to bike and pedestrian traffic in Region 1. Application 2T0270 requested one million dollars to fund the construction of a South Salem Transit Center, which would have enhanced access to public transit for the residents and commuters of south Salem. These projects—and others like them—would have had important and tangible benefits to many Oregonians in need of cost-effective transportation solutions. But none of those projects were even recommended for ConnectOregon V funding. The Commission should not use ConnectOregon to subsidize coal and crude oil infrastructure while more-deserving public transportation projects go unfunded.

Conclusion

Thank you for considering this important issue. As explained above, the three applications are not eligible for funding under the ConnectOregon program, and the Commission should not approve these projects, based on the criteria at OAR 721-035-0060(8). Important ConnectOregon V funds should not be used to subsidize controversial coal export and crude-by-rail proposals that will endanger Oregon's citizens and environment, and increase traffic congestion at railroad crossings across the state. Accordingly, the Coalition requests that the Commission not fund the projects described in Applications 1M0352, 1M0294, and 1R0350.

Sincerely,

*Columbia Riverkeeper
Oregon Rural Action
Oregon Physicians for Social Responsibility
Oregon Chapter of the Sierra Club
Friends of the Columbia Gorge
350 PDX
Greenpeace*

*Association of Northwest Steelheaders
Climate Solutions
Columbia Gorge Climate Action Network
Center for Biological Diversity
Onward Oregon
Washington Environmental Council*

Exhibits:

- Exh. 1: Global Partners LP, Application to Oregon DEQ for a Standard Air Contaminant Discharge Permit.
- Exh. 2: Port of St. Helens, Resolution No. 2013-81.

- Exh. 3: Letter from Columbia Riverkeeper to the Corps Explaining Need for an EIS on Port Westward Dock Expansions.
- Exh. 4: Economic Risks of the Morrow Pacific Project: Livelihood, Habitat, and Recreation
- Exh. 5: Letter from DSL to the Port of St. Helens Regarding the Port Westward Dock.
- Exh. 6: Letter from DEQ and DSL to Oregon Public Ports Association Explaining Need for Section 401 Certification for the Morrow Pacific Project.