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Key Documents in Corps' Coal Export Decision

***Obtained via FOIA Case
Riverkeeper v. U.S. Army Corps of Engineers***

Document 133

Letter from Colonel Eisenhower, Army Corps Portland District Commander, to Ambre Energy (Coyote Island Terminal) stating that the coal export project requires an Environmental Impact Statement (EIS) because of the significant impacts. This letter was never sent.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, PORTLAND DISTRICT
PO BOX 2948
PORTLAND OR 97208-2948

Operations Division

Mr. John Thomas
Coyote Island Terminal, LLC
170 S. Main Street, Suite 700
Salt Lake City, Utah 84101

Dear Mr. Thomas:

The U.S. Army Corps of Engineers, Portland District (Corps), has completed an initial review of the application submitted by Coyote Island Terminals, LLC, for Department of the Army (DA) authorization to construct structures in the Columbia River to develop the Morrow Pacific Project / Coyote Island Terminal near Boardman, Morrow County, Oregon. Our review considered your application and associated documents; the views of interested Native American tribes, other federal agencies, elected representatives, and the general public; the expertise of Corps staff; and other information.

I have determined that DA authorization of the proposed terminal would be a major Federal action likely to significantly affect the quality of the human environment, and therefore requires preparation of an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act. My rationale for this determination is summarized in the enclosed memorandum. Proceeding directly with an EIS, rather than first completing an Environmental Assessment, is not only procedurally appropriate but also will allow the Corps to make a permit decision in the timeliest possible manner.

The Corps will prepare the EIS with the assistance of a third-party contractor funded by Coyote Island Terminal, LLC. My regulatory staff will coordinate with you to develop a scope of work and select a third-party contractor. The Corps will direct the work of the contractor. Public scoping will begin after a notice of intent to prepare an EIS has been published in the Federal Register. If you have any questions, please contact Mr. Steve Gagnon, project manager for this permit evaluation.

Sincerely,

John W. Eisenhower, P.E.
Colonel, Corps of Engineers
District Commander



Document 191

Email exchange between Corps Portland office and Corps Headquarters in Washington D.C. Headquarters stopped the release of the announcement of the Environmental Impact Statement. Note that Jennifer A. Moyer, copied on the email, is the Acting Chief of the Corps' Regulatory Program—the top official for Corps permitting in the nation. In edits to the Communications Plan below the emails, Ms. Moyer questioned the need for an EIS, even after the Portland-based scientists concluded an EIS was necessary after months of reviewing the project.

-----Original Message----- From: Garman, Doug M HQ02
Sent: Thursday, September 06, 2012 11:30 AM To: Coffey, Michael A NWD
Cc: Morningstar, Desiree L HQ02; Moyer, Jennifer A HQ02; James, William L LRN
Subject: FW: DRAFT - Coyote Island Terminal phase II comm plan - 04 Sep 2012.docx (UNCLASSIFIED)

Classification: UNCLASSIFIED Caveats: NONE

Michael,

Attached are HQ Regulatory comments in track changes. Please note their concerns with having an announcement on Monday.

Doug

-----Original Message-----
From: Morningstar, Desiree L HQ02
Sent: Thursday, September 06, 2012 2:20 PM
To: Garman, Doug M HQ02; Moyer, Jennifer A HQ02; James, William L LRN
Subject: RE: DRAFT - Coyote Island Terminal phase II comm plan - 04 Sep 2012.docx (UNCLASSIFIED)

Classification: UNCLASSIFIED Caveats: NONE

Doug,

Attached please find the Reg CoP's comments on this plan. We have extensive concerns with the content of the document, and believe moving forward with an announcement on Monday as described in this plan is premature.

Please let us know if you would like to discuss. Thank you, Desiree

Page 196 to 197

The Portland office Communications Plan “Key Messages/Talking Points.” Officials at the Corps’ Headquarters used track changes to question the need for an EIS, even after scientists at the Portland office concluded an EIS was necessary.

DH at Headquarters commented: “What potential impacts of the project are so substantial that they are likely to be significant and warrant an EIS?”

And, “If the impacts that may be significant are in any of these categories, an EIS does not need to be completed to ensure they are appropriately addressed.”

The top Corps executive for permitting, Jennifer A. Moyer, commented: “Within the scope of the analysis defined, what potential impacts rise to the level of significance to warrant an EIS?” In track changes, JAM is likely Jennifer A. Moyer. The identity of DH is unclear.

Key Messages/Talking Points

Note: Many key messages and talking points from the NWD and NWP base communication plans will still be valid during this phase. PAO will go through those plans and develop a consolidated talking points document for media interviews, public inquiries, and etc.

- We have completed an initial evaluation of Ambre Energy’s proposed **Morrow Pacific Project**, comments received from the public, and other sources of information. We have determined that an Environmental Impact Statement will be necessary to analyze and document the proposal’s potential effects.
 - **Based on the description and potential impacts of the project, we think our authorization of the project is a major federal action that may significantly affect the**

Phase II Communications Plan: Coyote Island Terminal permit application review - 3 -

quality of the human environment, and therefore requires preparation of an Environmental Impact Statement to comply with the National Environmental Policy Act.

- Our current scope of analysis (i.e., control and responsibility) over this project includes construction of the in-water and upland facilities at the Port of Morrow.
- Our initial review also identified certain activities that we believe may be indirect effects of the proposed in-water and upland facilities. **These include barge and ship traffic on the Columbia River, and rail traffic to the appropriate degree and geographic extent.**
- We have identified **potential effects** of the project to air quality, cultural resources, endangered species, navigation, and tribal treaty rights (among others) that require analysis and documentation in our NEPA document.
- As we proceed with public scoping of the EIS, we will refine the extent to which we consider various direct, indirect, and cumulative effects in our environmental analysis.

- The EIS process will take a while to get started; **therefore, the public may not see much activity through until later** this fall. **(Why is the format of this bullet different than the others?)**
 - We will develop a scope of work and hire a contractor this fall to develop the EIS.

Comment [DH6]: Is this a new name that hasn’t been used before? Coyote Island, Port of Morrow and Ambre Energy are the names that have been used before.

Comment [DH7]: If you think an EIS may be warranted, but you are not sure, an EA should be completed. What “potential impacts of the project” are so substantial that they are likely to be significant and warrant an EIS? Impacts to tribal treaty rights can be addressed through government-to-government consultation, impacts to historic properties can be addressed through consultation with SHPO/THPO/other appropriate parties and impacts to ESA can be addressed through consultation with FWS. If the impacts that may be significant are in any of these categories, an EIS does not need to be completed to ensure they are appropriately addressed.

Comment [JAM8]: See DH7 comment. Within the scope of analysis defined, what potential impacts rise to the level of significance to warrant an EIS?

Comment [DH9]: Barge traffic and rail traffic are NOT indirect effects of the Section 10 structure. These are effects that are related to, but not physically caused by the activities subject to Corps jurisdiction. As slide 8 of the briefing for MG Walsh stated, barge and rail effects may be “disclosed with appropriate geographic extent and level of detail” but they are not indirect effects within the Corps control and responsibility.

Comment [JAM10]: What sort of “potential effects”? Ambiguous, needs clarification.

Page 198-199

The Corps' Communications Plan states that the public will see the Corps' evaluation and science after the EIS is developed, and that the impacts documented in the EIS will be important factors in the Corps' permitting decision on coal export. Since Corps headquarters quashed the EIS, the public and the Corps itself will not benefit from a rigorous review of the impacts.

Q: When will we see your evaluation and science?

A: After we complete scoping, we will develop a draft EIS for public review and comment.

Q: How will the EIS inform the ultimate agency decision?

ATTORNEY CLIENT PRIVILEGED

ATTORNEY WORK PRODUCT

DRAFT 2: 4 September 2012

For Internal Use Only

A: Our permit decisions are based on a weighing and balancing of a wide variety of public interest factors. Obviously, the effects of the proposal on the human environment documented in the EIS are important factors, but not the only ones.

Document 226

Excerpts of a draft “Memorandum for the Record” (MFR), written by Corps Portland staff. The MFR is the official document the Corps uses to explain the need for a full Environmental Impact Statement.

Page 227 – The Corps explained its authority to proceed directly to an Environmental Impact Statement “where it is obvious an EIS is required.”

CENWP-OD-GP

MEMORANDUM FOR THE RECORD

SUBJECT: (b) (5) for
the Coyote Island Terminal project (NWP-2012-56).

1. Decision authority: Pursuant to 40 CFR 1501.3, “*An assessment is not necessary if the agency has decided to prepare an environmental impact statement.*” Pursuant to the U.S. Army Corps of Engineers’ (Corps) NEPA Implementation Procedures for the Regulatory Program, the District Engineer has the discretion to not prepare an environmental assessment “. . . where it is obvious an EIS is required. However, the district engineer should document his reasons for requiring an EIS.” (see Part 33 CFR 325, Appendix B, § 7(a)). The Corps’ NEPA regulations

Page 233 – The Corps redacted the description of impacts to endangered species at the project site and other parts of the MFR, as allowed by the Court order.

Operation of the facility would cause impacts to ESA listed species at the project site,

(b) (5)

(b) (5)

Document 226

Excerpts of a draft “Memorandum for the Record” (MFR), written by Corps Portland staff. The MFR is the official document the Corps uses to explain the need for a full Environmental Impact Statement.

Page 232 – The Corps referenced the potential for spontaneous combustion of coal in barges. This was not disclosed to the public.

The applicant has proposed extensive controls to manage coal dust generated from handling the coal during transloading and barge transport operations. (b) (5)

Questions have also been raised in comment letters about controlling coal dust through the use of covered barges. There is potential for spontaneous combustion when transporting or storing coal, both through heating in the storage pile and buildup of methane off gassing from the coal. The concern is that the covered barges could exacerbate the spontaneous combustion risks.

Page 234 – The Corps’ described the navigational impacts from the coal export barges, concluding that “the increase in traffic would also be expected to cause delays”

Intensity: Constructing the piers and access trestle would involve a number of vessels ferrying materials to the site and barges facilitating pile driving and installation of overwater structures, which would likely have some adverse affect to navigation in the vicinity of the project area during construction. Once operating, the project would cause an increase of up to 1260 barge tows per year. At the three locks the tows would transit, this represents a range of increase from 47% at Bonneville to 74% at John Day. There is uncertainty how that level of increase would impact the navigation system on the river. While the anticipated total number of lockages, when including this project, would be just below historic highs of the mid 1990s, other uses on the river have increased since the 1990s. The increase in traffic would also be expected to cause delays as well as additional unplanned outages at the three locks.