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October 31, 2012

**VIA ELECTRONIC AND CERTIFIED MAIL**

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**Re: Public Comment on Removal-Fill Permit Application No. APP0049123, Coyote Island Terminals, LLC Coal Export Terminal, Columbia River, Morrow County**

To the Department of State Lands:

Thank you for the opportunity to provide comments on the proposed Ambre Energy, dba Coyote Island Terminals, LLC (hereafter “Ambre”) Removal-Fill Permit Application No. APP0049123 (hereafter “the permit”). The following comments are submitted on behalf of Columbia Riverkeeper, Sierra Club, the Oregon Environmental Council, Oregon Physicians for Social Responsibility, National Wildlife Federation, Climate Solutions, the Center for Biological Diversity, Greenpeace, Friends of the Columbia Gorge, and the Washington Environmental Council. Our non-profit organizations represent tens of thousands of members across Oregon and the Pacific Northwest who are dedicated to protecting the environment and natural resources of our region for future generations.

### **INTRODUCTION**

As you know, our organizations submitted comments to DSL on March 30, 2012, and at that time we expressed grave concern that the public was asked to provide input long before Ambre released environmental information that will be used by federal agencies in making decisions under the Rivers and Harbors Act (“RHA”), the National Environmental Policy Act (“NEPA”), and the Endangered Species Act (“ESA”). Now, having had a mere 30 days to review and comment on the information provided by Ambre, we strongly recommend that DSL refrain from taking any action on Ambre’s application until such time as the Army Corps of Engineers (the “Corps”) and the National Marine Fisheries Service (“NMFS”) have determined whether and how the proposed coal export terminal complies with federal law. In the alternative, DSL should deny the permit application because Ambre’s project fails to comply with state law.

We urge DLS to utilize information produced through the federal process for two primary reasons. First and foremost, the information provided by Ambre demonstrates the potential for severe interference with navigation, fishing and public recreation as well as adverse impacts to the water resources of the state. DSL is therefore unable, at this time, to reach a rational decision that the applicable statutory and regulatory criteria have been met.<sup>1</sup> Those impacts, as will be discussed, relate directly to water-dependent resources and activities, including impacts to no fewer than thirteen (13) different populations of salmon and steelhead, all of which are listed as either threatened or endangered. The only information that Ambre has provided on these impacts is a Biological Assessment (BA), which admits that the project is likely to adversely affect all of these listed populations but then falls short of quantifying or otherwise predicting the extent of the adverse impacts. The available information also documents likely adverse

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<sup>1</sup> ORS 196.825(1)(a)-(b); OAR 141-085-0565(3)-(5).  
Columbia Riverkeeper *et al.* Second Public Comment  
Coyote Island Terminals, LLC Removal-Fill Permit Application  
Page 2

impacts to navigation in the Columbia River channel, Tribal fishing rights, water quality, public health and safety, and environmental justice.

Second, Ambre has a well-documented history of misleading the public and regulatory agencies. As we discussed in our comments of March 30, 2012, Ambre provided incorrect and misleading information to the public regarding its proposed Millennium coal export facility in Longview, Washington, and attempted to downplay the true nature of its proposal until after the local environmental review process had been completed. Here, critical information is missing relating to the environmental effects of the project, and Ambre and its consultants have reached summary conclusions in the absence of scientifically valid analysis. In particular, Ambre's claims about the risk of coal dust, stormwater discharges, process water discharges, and coal dust toxicity are all highly suspect, which further calls into question the credibility of the project proponent and also reinforces the need for a detailed and independent review conducted by government agencies that have a broad range of staff expertise and adequate resources.

Because of potentially severe impacts to the natural resources of the Columbia River and Ambre's checkered history in the region, we strongly urge DSL to allow the federal government to take the lead on reviewing the available information and assessing the validity and transparency of the analysis and conclusions provide by Ambre and its contractors. Instead of dedicating limited state resources in furtherance of this project, DSL would be better served by allowing the Corps and NMFS to determine how this project will move forward, if at all, under federal law before determining whether the criteria under Oregon's removal and fill laws and regulations have been met. Because the Corps must conduct an analysis under NEPA and the RHA, and because NMFS must issue a biological opinion under Section 7 of the Endangered Species Act, the final project design, including applicable mitigation measures, could very well change as a result of federal oversight and control. The timing of that process is uncertain, as is the outcome. What we do know, however, is that the information produced and analysis conducted as a result of the federal processes will be relevant to the findings that DSL must make under state law. By withholding a decision under state law until the federal agencies have completed their work, DSL will conserve severely limited state resources while allowing the public, the applicant and other stakeholders to focus on the upcoming federal review.

Indeed, the size and complexity of the project are additional reasons why DSL should take ample time to adequately analyze its impacts. It was for this reason and the public controversy surrounding the project that commenters sought an extension and public hearings from DSL but were denied that opportunity. Additional time, and allowing the federal Army Corps process to conclude, would allow for a more meaningful discussion of the proposed Morrow project.

As DSL is well aware, numerous federal, state, and local agencies and officials have called on the Corps to conduct both an area-wide and a site-specific EIS that addresses the impacts of the Port of Morrow coal export terminal in combination with the

other Columbia River and West Coast coal export proposals. These requests have been made by Governor Kitzhaber, Senator Jeff Merkley, the Environmental Protection Agency, the Washington Departments of Ecology and Natural Resources, the Yakama Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe as well as numerous county and municipal governments, including the City of Portland, the Metro Council, the City of Milwaukie, and the City of Eugene.<sup>2</sup> Indeed, more than 25,000 citizens have submitted comments to the Corps requesting the same comprehensive analysis. These issues transcend state boundaries, with communities from Montana, Wyoming, Idaho, Washington, and Oregon all expressing grave concern about these proposals.

Given the level of public concern and controversy regarding this specific proposal as well as coal export more broadly, DSL should refrain from being the first federal or state agency to issue an authorization for one of these terminals. Doing so would make DSL the first agency to come forth with conclusions on the environmental impacts of coal export through the Columbia River. For the numerous reasons stated herein we believe that the initial decisions should be made by federal – and not state – agencies.

Throughout these comments, we provide additional analysis of the information provided to the public. We incorporate by reference our earlier comments of March 30, 2012, which we refer to herein as our “First Comment Letter.” We have also provided several expert analyses of various portions of the Environmental Review and associated materials. Mr. Joseph Leyda of Leyda Consulting, Inc. has reviewed the documents and provides a discussion of the potential adverse ecosystem impacts of fugitive coal dust, process water discharges and stormwater discharges and a critique of the toxicology report. Mr. Randy Bailey from Bailey Environmental provides a review and critique of the Biological Assessment and Environmental Review as they relate to impacts to fish and fish habitat issues. Ms. J. Phyllis Fox, Ph.D, has provided an expert critique of the estimates of fugitive dust emissions and control efficiencies. And Khan Tran of AMI Environmental has provided results of air quality modeling, which are relevant for assessing impacts relating to environmental justice as well as nitrogen deposition. Each of their reports is attached to these comments as exhibits.

**A. DSL should Deny the Permit Based on a Lack of Public Need.**

As in initial matter, DSL should deny the permit because there is no public need for Ambre’s coal export project, including the proposed coal export dock. Under ORS 196.825(1)(a) and OAR 141-085-0565(4)(a), DSL must assess “[t]he public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed fill or removal.” As we explained in the First Comment Letter,

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<sup>2</sup> On September 21, 2012, we provided to the Corps a letter (hereafter, “First Comment Letter”) requesting information on the upcoming NEPA process, which sets forth more information on the broadly shared concerns about the need for a comprehensive federal analysis. That letter is attached for your review as Exhibit 1.

whether DSL's scope of analysis is the public need for the Morrow Pacific Project, in general, or the removal-fill at the Port of Morrow, the agency cannot reach a finding that there is a public need.<sup>3</sup> In addition, as an overseas company that stands to reap the vast majority of any economic benefit from the project, Ambre grossly overstates the project's benefits. DSL must temper Ambre's assessment of the project's benefits with the reality of the commodity Ambre intends to handle: the coal export market is highly volatile with a history of failure in Oregon.<sup>4</sup>

Ambre sets forth one overarching need for the project – the “Need to Fulfill World Coal Demand.”<sup>5</sup> For the reasons explained in the First Comment Letter, we strongly contest the notion that the world's coal demand creates any public need under Oregon state law for a removal-fill project in Oregon state waters.<sup>6</sup> As we explained then, the legislature intended the scope of the “public need” analysis to be local and, at most, statewide. Nothing in the text or context of the statute supports Ambre's interpretation that energy demand overseas equates to a “public need” for a removal-fill permit in Oregon waters.

The coal that would supposedly be handled by this project would not be mined in Oregon, the coal would not be burned in Oregon, and the energy that would be produced by the burning of coal would not be used to power Oregon's economy. In short, Oregon has no need whatsoever for coal being exported to Asian countries.

Moreover, the State's commitment to combat climate change directly undercuts a finding of a “public need,” “public benefit,” or “social benefit” for a coal export terminal.<sup>7</sup> The exporting of coal through Oregon – or feeding the world's appetite for a dirty and outdated source of energy – is directly contrary to the public need in Oregon to combat climate change. That need has been recognized by the Oregon Legislature, by the Governor's office, and by our administrative agencies, including DSL. The proposed coal export project would therefore conflict with Oregon's interest in the preservation of its natural resources, including water resources, and the promotion of renewable sources of energy, both within our state borders and around the world.

DSL should also reject Ambre's argument that “jobs equal public need.” In short, Ambre argues that the Morrow Pacific Project will produce jobs in Morrow and Columbia counties and, therefore, there is a “public need” for the project.<sup>8</sup> Setting aside whether Ambre's employment projections are accurate, an applicant cannot demonstrate a public need based on employment projections alone. For example, a company could

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<sup>3</sup> First Comment Letter at 20-23.

<sup>4</sup> *Id.* at 21 – 22.

<sup>5</sup> ERD at 1-3.

<sup>6</sup> First Comment Letter at 20 – 21 (explaining that public need analysis is based on local, not global need).

<sup>7</sup> *Id.* at 22.

<sup>8</sup> *See* Anderson Perry Memo to DSL (June 29, 2012); *see also* ERD at 1-4.

propose dredging every square inch of the Columbia River from Bonneville Dam to John Day Dam using small vessels that employ hundreds of people. Clearly, there is not a “public need” to dredge every square inch of the Columbia, even though it would undoubtedly produce a lot of jobs. Yet if DSL were to accept Ambre’s argument, it would likewise have to find a “public need” in this hypothetical. The public need analysis, as well as the social and economic benefit analysis, is clearly intended to capture more than the promise of jobs. There must be a demonstration of public need for the activity beyond the jobs created, and, as discussed above, DSL must find that there is a need *in Oregon* for that activity to take place. Yet Ambre can point to no “public need” for coal export beyond supporting foreign economies that are relying on dirty and outdated sources of energy and thereby exacerbating the impact of climate change. Given the volatile nature of the global demand for coal—which is currently on a downswing—investing resources in this facility may only be setting up the county and the state for a boom-bust facility, to be shuttered in a few years at taxpayer expense just as the Port of Portland’s coal facility was years ago.

Finally, Ambre cannot demonstrate a public need for the proposed removal-fill because there is no public need for another industrial dock at the Port of Morrow.<sup>9</sup>

**B. DLS Should Deny the Permit because Ambre’s Project would Unreasonably Harm Navigation, Fishing, and Public Recreation.**

Since the close of the last comment period, Ambre released important new information on the dramatic increase in vessel traffic that would result from the Morrow Pacific Project. For this reason alone, DSL should deny the permit. ORS 196.825(1)(b) states that the Department “shall issue a permit . . . if the director determines that *the project* described in the application . . . (b) Would not unreasonably interfere with the paramount policy of the state to preserve the use of its waters for navigation, fishing, and public recreation.”<sup>10</sup> DSL cannot reach the required statutory determination based on the substantial increase of vessel traffic caused by the Morrow Pacific Project.

The amount of barge traffic produced by the Morrow Pacific Project is staggering. Ambre’s Environmental Review Document (ERD) states:

Under initial operations, the MPP [Morrow Pacific Project] will increase total vessel traffic on the Columbia River by approximately 550 barge tows annually (including both directions), an increase of approximately 20.5 percent over 2011 conditions below the Bonneville Dam. At full capacity, the project will generate a total of 1,257 barge tows annually (including both directions), an **average increase in total vessel traffic of 46.8 percent** over 2011 conditions.<sup>11</sup>

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<sup>9</sup> See First Comment at 23 -24.

<sup>10</sup> ORS 196.825(1)(b) (emphasis added); see also OAR 141-085-0565(3)(c).

<sup>11</sup> ERD at 3-18 (emphasis added); see *id.* at 4 (“The most notable impact of the [Morrow Pacific Project] may be the increased number of vessels in the lower Columbia River.”).

Columbia Riverkeeper *et al.* Second Public Comment

Coyote Island Terminals, LLC Removal-Fill Permit Application

Ambre’s draft Biological Assessment (BA) paints an even darker picture. According to the draft Biological Assessment, the project will increase the number of barges on the Columbia River by 94%. Table 3-5 from the BA aims to capture the drastic increase in barge traffic:

**Table 3-5. Summary of Barge and Tow Traffic per Year at Bonneville Dam for Project Full Capacity**

Additional Traffic from the Project (Per Year)		Total Traffic	Bonneville Dam		Effect Relative to:	
			Current Level (2010)	Historic High (1995)	Current Levels (2010)	Historic High Levels (1995)
Total Barges	5,029	10,382	5,353	8,037	94% increase	29% increase
Total Tows	1,258	3,972	2,714	4,040	46% increase	98% of historic high

In fact, Table 3-5 and Ambre’s BA underestimate the true impact of the project on the Columbia River upstream of Bonneville Dam. Specifically, using Bonneville data ignores the fact that these barges are now going all the way to Boardman, through two more locks and 100 more miles of river. There are almost 1000 less barges going through John Day Dam than going through Bonneville Dam.<sup>12</sup> In turn, without accounting for barge traffic through the John Day and The Dalles dams, the true increase of barge traffic from the Port of Morrow to Bonneville Dam is not captured.

The significant increase in barge traffic also increases the risk of barge groundings and spills in the Columbia River. These risks are not theoretical. For example, in 2009 a barge carrying a million gallons of gasoline ran aground in the Columbia River near the City of Hood River. An investigative report by the *Oregonian* uncovered U.S. Coast Guard documents describing a “great deal of confusion” over who was in charge, with agencies responsible for containing a fuel spill left out of the loop for hours after the accident.<sup>13</sup> The Corps must consider the potential adverse impacts of significantly increasing barge traffic on the dynamic Columbia River, and the increased potential for groundings and spills associated with the increased volume of barge traffic.

Similarly, DSL must evaluate the increased risk of direct conflicts with existing barge traffic on the Columbia, including the increased risk of catastrophic accidents. On the Mississippi River, which experiences a higher volume of barge traffic than the Columbia, accidents involving barge collisions demonstrate the increased risk to human

<sup>12</sup> Lockage Data from U.S. Army Corps of Engineers. Ex. 2.

<sup>13</sup> Scott Learn, *New Dawn Fuel Barge Ran Aground in the Columbia River, Response Was Confusion, Report Says*, *Oregonian* (June 20, 2010) (available at [http://www.oregonlive.com/environment/index.ssf/2010/06/new\\_dawn\\_fuel\\_barge\\_ran\\_agroun\\_1.html](http://www.oregonlive.com/environment/index.ssf/2010/06/new_dawn_fuel_barge_ran_agroun_1.html)). Ex. 3.

life and the environment posed by increasing barge traffic. For example, on May 20, 2010, three grain barges sank on the Mississippi River near Baton Rouge following a collision between a barge transporting food products and a barge transporting sulfuric acid.<sup>14</sup> The accident prompted the U.S. Coast Guard to close the shipping channel. In mid-2008, a barge split open in a collision with a tanker, resulting in an oil spill and prompting federal agencies to close 85 miles of the Mississippi River to traffic for almost a week. According to reports, the accident was the result of human error.<sup>15</sup> On February 17, 2012 a tanker barge traveling downriver on the Mississippi rammed a crane barge being pushed upriver about 50 miles from New Orleans. The collision tore a 10-foot by 5-foot gash above the waterline of the double-hulled tanker barge and oil spewed less than 10,000 gallons of Louisiana sweet crude oil into the water.<sup>16</sup> These are just several examples of accidents involving barge traffic.

Given the significant increase in river traffic from Ambre's project, the DSL must assess the increased risk of barge accidents and potential threats associated with these accidents, including coal spillage, barges sinking, and oil spills, as part of its analysis of whether the project will "unreasonably interfere with navigation, fishing and public recreation."<sup>17</sup>

The Morrow Pacific Project's dramatic increase in Columbia River barge traffic will also directly and unreasonably interfere with public recreation.<sup>18</sup> Since the close of the last comment period, the City of Hood River and the Columbia Gorge Windsurfing Association (CGWA) passed resolutions opposing Ambre's Morrow Pacific Project based on the dramatic threat it poses to public recreation on the Columbia River.<sup>19</sup> The City of Hood River's resolution recognizes the "negative impacts of shipping coal by barge on the Columbia River," including the negative impacts to Hood River's economy which thrives on river-related recreation. The CGWA resolution also describes the impacts of Ambre's proposal, stating in part:

[The] increased barge traffic, along with a growing population of river users and growing sandbars appearing throughout the Columbia River

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<sup>14</sup> Susan Buchanan, *River Traffic Resumes After Barge Accident But Threats Remain*, The Louisiana Weekly (June 4, 2011) (available at <http://www.louisianaweekly.com/river-traffic-resumes-after-barge-accident-but-threats-remain/>). Ex. 4.

<sup>15</sup> *Id.*

<sup>16</sup> New York Daily News, *Barge Collision in Mississippi River Causes Oil Spill* (Feb. 12, 2012) (available at [http://articles.nydailynews.com/2012-02-18/news/31073328\\_1\\_bargecollision-tanker-barge-oil-spill](http://articles.nydailynews.com/2012-02-18/news/31073328_1_bargecollision-tanker-barge-oil-spill)). Ex. 5.

<sup>17</sup> ORS 196.825(1)(b).

<sup>18</sup> See First Comment at 19 (describing impacts to boating, kayaking, canoeing, windsurfing, and kiteboarding).

<sup>19</sup> Columbia Gorge Windsurfing Assoc., Resolution No. 2012-01 (May 9, 2012)). Ex. 6. Columbia Riverkeeper *et al.* Second Public Comment Coyote Island Terminals, LLC Removal-Fill Permit Application

corridor increases danger on the water . . . [and] the possibility of deteriorating safety, river access, and environmental quality in the Gorge from coal shipments will adversely affect the tourism and industry brought to the region by windsurfing and kiteboarding, an estimated added value of \$1.7-\$3.7 million per year.

The City of Hood River and CGWA's unprecedented decision to pass resolutions opposing coal barging demonstrates the significant impact of one project on public recreation.

The project will also generate substantial air emissions, which will unreasonably interfere with the ability of the public to use the Columbia River for fishing and recreation. We have attached the results of an air modeling analysis, discussed later in these comments, that identifies likely exceedances of the National Ambient Air Quality Standards for particulate matter and nitrogen oxides, which will threaten the health of river users.

Even if DSL applies a narrow interpretation of the "project" and only analyzes the impact of the coal dock, DSL should nonetheless deny the permit under ORS 196.825(1)(b). Comments by the Yakama Nation and statements by individual members of the other tribes demonstrate that Ambre's coal dock will unreasonably interfere with fishing.<sup>20</sup> For example, Bruce Jim, a Warm Springs tribal elder, states that his fishing sites will be "wiped out completely" at the Port of Morrow.<sup>21</sup> In comments to DSL, the Yakama Nation states: "The site of the proposed action described in the [removal-fill] Application is located completely within an area of active commercial gillnet fishing by members of the Yakama Nation." Based on the coal dock's direct and unreasonable impacts to fishing, DSL must deny the removal-fill permit.

**B. DLS Does Not Have Adequate Information on the Potential Adverse Impacts on Salmon and Steelhead to Determine that the Project is Consistent with the Protection, Conservation and Best Use of the Waters of the State and Would Not Interfere with the Preservation of State Waters for Navigation, Fishing and Public Recreation.**

Although there are substantial questions about the public need for the project, the documents submitted by Ambre, including the Biological Assessment (BA) and Environmental Review Document (ERD), establish a clear potential for significant harm to water resources, including thirteen separate populations of salmon and steelhead, all of which depend on the project area within the Columbia River as habitat. Given the potential for adverse impacts to salmon and steelhead, DSL simply does not have enough

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<sup>20</sup> Confederated Tribes and Bands of the Yakama Nation comments on Permit Application NWP-2012-56, attached as Exhibit 29; National Wildlife Federation Report (NWF Report) at 13 – 15, attached as Exhibit 7.

<sup>21</sup> NWF Report at 13 – 15.

information to move forward with issuing the requested permit. There is no rational basis for DSL to determine based on the available information that the applicable statutory and regulatory criteria have been met. DSL must therefore either deny the permit or wait until such time as it has further information on this critical issue.

## 1. Background on Section 7 of the Endangered Species Act Consultation Process

First, it is helpful to provide context on the Endangered Species Act consultation process to understand what conclusions are set forth - and what is not included - in the Biological Assessment. Under Section 7, federal agencies are required to consult with NMFS regarding actions “authorized, funded, or carried out by such agency” to ensure that those projects and activities are “not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat \* \* \*.”<sup>22</sup> A biological assessment is prepared by the federal agency “for the purpose of identifying any endangered species or threatened species which is likely to be adversely affected by such action.”<sup>23</sup> NMFS has issued regulations implementing Section 7, which also state that biological assessments are used to “determine whether any [listed] species or habitat is likely to be adversely affected by the action.”<sup>24</sup> The key point here is that under the Section 7 process, a BA is not required to include, nor does Ambre’s BA include, analysis and conclusions on the *extent* of the impacts to salmon and steelhead, which are central to the findings that must be reached by DSL prior to issuing a removal/fill permit.

Instead, pursuant to Section 7, once a determination has been made through a BA that the proposal “may affect” a listed species, “formal consultation is required.”<sup>25</sup> During that formal consultation process, NMFS has the obligation to:

- “Evaluate the effects of the action and cumulative effects on the listed species”;
- “Formulate its biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species \* \* \*”;
- Develop a statement that “[s]pecifies the impact, i.e., the amount or extent of such incidental take on the species;” and
- “Specif[y] those reasonable and prudent measures that [NMFS] considers necessary or appropriate to minimize such impact.”<sup>26</sup>

Whereas the BA is used to make a threshold determination of whether a listed species may be affected, it is during the formal consultation process that NMFS

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<sup>22</sup> 16 U.S.C. § 1536(a)(2).

<sup>23</sup> *Id.* § 1536(c)(1).

<sup>24</sup> 50 C.F.R. § 402.12(a).

<sup>25</sup> *Id.* § 402.14(a).

<sup>26</sup> *Id.* § 402.14(g)(3)-(4), (i)(1)(i)-(ii); *see also* 16 U.S.C. § 1536(b)(4).

determines whether the project could jeopardize a listed species. The resulting biological opinion quantifies the amount of take and develops measures to minimize the impact. Furthermore, in formulating its biological opinion, NMFS must utilize “the best scientific and commercial data available \* \* \*.”<sup>27</sup>

This context is important because it demonstrates that the BA was not designed to and, as will be discussed, does not include any conclusions on the extent to which the proposed project will result in adverse impacts to salmon and steelhead. Instead, the sole purpose of the BA, and the sole conclusions set forth in the document, relates to whether the project is “likely to adversely affect” the species, a threshold determination that then triggers the need for formal consultation. And indeed, the BA concludes that numerous potential adverse impacts associated with the project are “likely to adversely affect” all thirteen listed populations of salmon and steelhead in addition to bull trout.

## **2. The BA Documents a Wide Range of Potential Adverse Impacts to Salmon and Steelhead But Fails to Assess the Level of Impact**

Despite the summary nature of the analysis in the BA, it does recognize and set forth numerous ways in which the project could adversely affect salmon and steelhead in the Columbia River. Without repeating the limited discussion set forth in that document, it is helpful to review a summary of the full range of potential impacts acknowledged in the BA.

The potential impacts admitted to in the BA include:

- In-water construction will cause increased sedimentation and turbidity;<sup>28</sup>
- Underwater noise associated with in-water construction activities will subject salmon and steelhead to disturbance and/or injury;<sup>29</sup>
- Construction and operation of heavy machinery in or near the Columbia River will increase the risk of chemical spills;<sup>30</sup>
- The construction of the dolphins, walkway, conveyor, and barge staging area at the Port of Morrow will increase shading, which can result in higher levels of predation;<sup>31</sup>
- Loading of barges will increase the risk of coal spills into the Columbia River;<sup>32</sup>
- Increased barge traffic and OGV traffic will increase the likelihood of fuel spills and environmental contamination;<sup>33</sup>

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<sup>27</sup> *Id.* § 402.14(g)(8).

<sup>28</sup> BA at 6-1.

<sup>29</sup> *Id.* at 6-5.

<sup>30</sup> *Id.* at 6-2.

<sup>31</sup> *Id.* at 6-6.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 6-3-4.

- Propeller wash from tugboats and OGVs will disturb contaminated sediments at Port Westward, suspending toxic chemicals into the water column;<sup>34</sup>
- Transloading from the barges to OGVs will increase the likelihood of coal spills into the Columbia River;<sup>35</sup>
- Salmon and steelhead may be subject to wake stranding resulting from barge and OGV traffic;<sup>36</sup>

The BA and ERD also ignore or discount without adequate discussion additional potential impacts, including:

- Impacts from stormwater runoff;
- Impacts from the likely discharge of process waste water;
- Spills of coal and coal dust from rail transportation and transfer at both the Port Morrow and Port Westward;
- Increased shading and predation from staging of coal barges at Port Morrow and Port Westward;
- Harm to aquatic life and water quality due to increased sedimentation and turbidity from significant increase in barges and tugs;
- Harm to salmon rearing habitat at and near Port Westward, including Crims Island, and all along the barge transport route;
- Invasive species from ballast water in OGV arriving from Asia and other foreign ports;
- Impacts to aquatic habitat from nitrogen deposition associated with air emissions; and
- Health impacts due to mercury deposition in the Pacific Northwest from burning coal.

Despite acknowledging a wide range of potential impacts (and ignoring others), the BA stops short of determining the *extent* of those impacts on salmon and steelhead. In its Finding of Effect, the BA includes a brief, qualitative description of the kinds of impacts that could result. For each listed population of salmon and steelhead, the BA concludes that “the Morrow Pacific project could *result in a probability of take \* \* \**.”<sup>37</sup> Further, the BA also concludes that “the proposed project may affect, and is *likely to adversely affect*” each of the thirteen listed populations of salmon and steelhead.<sup>38</sup>

Moreover, as discussed by Mr. Bailey in his report, the BA itself is fundamentally flawed. It uses as a framework for analysis the Matrix of Pathways and Indicators, which was developed to assess the potential impacts of logging and other forest management

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<sup>34</sup> *Id.* at 6-4.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 6-8-9.

<sup>37</sup> *Id.* at 11-1-5 (emphasis added).

<sup>38</sup> *Id.* (emphasis added).

activities under the Northwest Forest Plan's Aquatic Conservation Strategy. It was never intended nor should it serve as a tool to assess the impacts of shipping and in-water activities in the main stem Columbia River.

Finally, the information provided by Dr. Fox is critical to DSL's analysis, because it demonstrates that Ambre's projections of fugitive coal dust are inaccurate by orders of magnitude. As a result, all conclusions regarding the potential impacts to aquatic species are unreliable and must be redone to account for the likelihood of significant fugitive coal dust problems at both Port Morrow and Port Westward. Mr. Leyda further discusses the potential impacts that coal dust can have on aquatics organisms and habitat.

The critical point for purposes of DSL's review at this point, however, is that the BA does not include any discussion, analysis or conclusions as to the overall level of effect on salmon and steelhead. The BA does not purport to conduct this analysis, and there are no conclusions in the document as to overall impacts. Instead, the BA was designed from the beginning only as a means to identify the potential species that may be affected by the proposed project. The BA makes no effort to analyze how severe those impacts may be nor whether those impacts could jeopardize the continued existence of the listed species, interfere with recreational, commercial or Tribal fisheries, public health and safety, or otherwise injure water resources of the state.

### **3. The ERD is Devoid of Any Additional Analysis.**

For its part, the ERD fails to include any additional analysis, simply cross-referencing the limited information included in the BA.<sup>39</sup> There is no additive analysis or data included in that document that would help DSL assess the applicable statutory and regulatory criteria.

Moreover, our organizations question whether the ERD is designed properly to provide useful information and analysis on the extent of potential adverse impacts to salmon and steelhead. The ERD addresses this issue in Section 3.11 Ecosystems. This section of the ERD covers a wide range of resources from vegetation and wetlands, to upland habitat, marine mammals, amphibians and reptiles, and fisheries. The discussion of potential impacts to salmon and steelhead is included as an exceptionally brief and summary subsection.

It is typical for environmental analysis documents to address impacts to salmon and steelhead, particularly those listed under the ESA, in a stand-alone section dedicated solely to that topic. Doing so facilitates a more targeted and informed discussion of the baseline conditions, the potential scope of the activities, and a method and analysis for assessing the level of impact. By lumping a discussion of salmon and steelhead into a broader discussion that includes the totality of ecosystem components, the ERD fails to provide the requisite level of detail and attention to this critical issue and it fails to

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<sup>39</sup> ERD at 3-222, 224.

organize the information in a way that is helpful to DSL based on its statutory and regulatory criteria.

**4. DSL Should Disregard the Unsubstantiated Conclusions in the June 29, 2012 Memo from Anderson Perry & Associates, Inc.**

Despite the obvious limitations in the BA and ERD, on June 29, 2012, Catie Kerns from Anderson Perry & Associates, Inc. provided a memo to DSL in which she concludes summarily that “[l]ong-term impacts to fish populations are not anticipated.”<sup>40</sup> In that memo, Ms. Kerns completely fails to describe how she reached this conclusion or to which populations she is referring. Instead, after acknowledging a small subset of the potential impacts to salmon and steelhead and then alleging without further analysis that mitigation measures would “minimize” those impacts, she refers back to the BA.

DSL should disregard this unsubstantiated statement, because Ms. Kerns’s conclusions are not supported by any valid scientific analysis. She cites to the BA, but as discussed above, this document was never intended to nor did it attempt to assess impacts to populations, long term or otherwise. Moreover, the BA mistakenly relies on the Matrix of Pathways and Indicators as discussed above.

This example illustrates why our organizations feel so strongly that federal agencies should take the lead on conducting a thorough and independent review of information and analysis provide by Ambre and its consultants. In this circumstance, Ambre and its consultants prepared a BA for the limited purpose of determining whether certain species may be adversely affected, and then they later cited to their own BA in support of a population-level conclusion that was never set forth in the original document. In this manner, Ambre and its consultants misuse their own documents in an effort to reach a supposed effects determination that is not supported by valid scientific analysis that uses accurate data and transparent methodologies. The issues at stake are too important, and the level of public concern is too high, for independent regulatory agencies to base their decisions on this highly suspect, circular and self-serving form of so-called analysis.

**5. DSL Does Not Have Adequate Information At This Time to Issue the Requested Permit.**

Based on the limited information available in the BA, which documents threatened take of all thirteen listed populations of salmon and steelhead, DSL does not have adequate information at this time to conclude either that the project is “consistent with the protection, conservation and best use of the water resources of this state” or that the project would “not unreasonably interfere with the paramount policy of this state to

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<sup>40</sup> Memo from Catie Kerns, Anderson Perry & Associates, Inc. to Charles Redon, Oregon Department of State Lands, Re: Response to Letter Dated April 11, 2012 (49123-RF) (June 29, 2012).

preserve the use of its waters for navigation, fish and public recreation.”<sup>41</sup> As discussed in the rules, the “applicant bears the burden of providing the Department with all information necessary to make this determination.”

Because the information provided by the applicant here documents serious threats to the conservation of thirteen populations of salmon and steelhead, all of which are listed as threatened or endangered, the Department cannot conclude at this time that the project meets the applicable statutory and regulatory criteria of conservation and best use of the water resources of the state and interference with fishing and public recreation. Without any analysis of the *extent* of the potential adverse impacts to all thirteen listed populations, the Department does not have a rational basis at this time to find that these criteria have been met.

In addition, the Environmental Review relies heavily on the use of surfactants to control coast dust that could otherwise have adverse impacts on aquatic resources.<sup>42</sup> This is a highly suspect assumption for a number of reasons. First, the dust control measures are voluntary and are currently under challenge before the Surface Transportation Board (STB) by the Western Coal Traffic League and other industry groups, who have referred to the tariff as being based on “junk science.”<sup>43</sup> In particular, the companies that ship coal assert, through their experts in the case, that sprays “can work when applied to a large pile of coal *that is stationary*, but there are still many aspects of their performance *in moving railcars* that have not yet been verified.”<sup>44</sup> The industry groups also question whether 85% effectiveness is achievable based on the studies to date.<sup>45</sup> Here again, the information provided by Ambre is highly suspect. In this site-specific setting, it promotes surfactants as a solution to the problems of coal dust, while at the same time, groups representing its industry are attacking those same techniques as “junk science.” Moreover, nothing in this application indicates any dust control measures beyond this alleged loading practices tariff, so there is no guarantee of any dust control measures being applied, which is the current industry norm.<sup>46</sup> Even assuming Ambre is correct that surfactants will be used - which is for the above-stated reasons highly unlikely - a great deal of coal dust will be coming off of the rail cars by the industry’s own estimates. BNSF has stated that 500-2000 lbs of coal come off of each train car during a trip, with 125 cars/train, even an 85% reduction yields 9375-37,500 lbs of coal coming off of each

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<sup>41</sup> ORS 196.825(1); OAR 141-085-0565(3), (5).

<sup>42</sup> See, e.g., ERD at 3-4.

<sup>43</sup> *In Re: Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions* (Finance Docket No. 35557). Ex. 17.

<sup>44</sup> *Id.* at 19 (quoting report of Dr. Mark J. Viz, Ph.D, P.E).

<sup>45</sup> *Id.* at 21-23.

<sup>46</sup> Tavanger, Sayeh, “Some shippers not complying with BNSF coal dust tariff,” Nov 3, 2011, Platts Energy Week, WUSA 9, <http://www.wusa9.com/news/local/story.aspx?storyid=173329> (noting that a “ source at a utility coalition estimated that only 30% of shippers are complying with the rule.”)

train.<sup>47</sup> Ambre estimates that over 600 trains per year could be handled at the Port of Morrow.

Finally, DSL should request additional information from Ambre on the environmental impacts of exporting bituminous coal. Specifically, coal export facilities could be used to export coal mined anywhere in North America. DSL should therefore consider the environmental impacts of bituminous coal, which is found in Utah.<sup>48</sup>

DSL cannot determine at this time that the Morrow Pacific Project meets the statutory criteria of ORS 196.528(1). The BA documents a wide range of potential adverse impacts to thirteen listed populations of salmon and steelhead without assessing the extent of those impacts. Mr. Bailey and Mr. Leyda has provided additional expert information on how the project is likely to impact salmon and steelhead. And DSL must, by law, consider the project as a whole, as set forth in the ERD. To protect the state's paramount policy of conserving salmon and steelhead, DSL should deny the requested permit, or, at the very least, take sufficient time to allow the Corps and NMFS to develop information on the extent of the potential impacts to these important aquatic resources.

**C. Port Morrow and Port Westward must be considered together as one project**

Please refer to our comments from March 31, 2012 for a discussion of how DSL must define the project. As we discussed in our original comments, the Port Morrow and Port Westward activities lack independent utility and have always been discussed and considered by Ambre as a single project, which is reflected in the fact that Ambre refers in the ERD to the “aggregate” of these operations as the “Morrow Pacific Project.”<sup>49</sup> DSL must therefore define the project to include activities at both locations and must then compare the Morrow Pacific Project to the primary statutory criteria in ORS 196.825(1). DSL does not have adequate information on the impacts to salmon and steelhead from the Morrow Pacific Project to determine that the statutory criteria have been met.

We also appreciate that DSL asked the applicant whether additional removal or fill may be required at Port Westward; however, we strongly encourage DSL to disregard the highly suspect statements from Ambre's consultant, Anderson Perry & Associates.

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<sup>47</sup> Burlington Northern Santa Fe Railway, “Coal Dust FAQ,” Mar 2011, <http://www.coaltrainfacts.org/docs/BNSF-Coal-Dust-FAQs1.pdf>.

<sup>48</sup> Mike Gorrell, *Arch Coal's port purchase could help Utah mines*, The Salt Lake Tribune (January 13, 2011) (available at <http://www.sltrib.com/sltrib/money/51045274-79/coal-arch-utah-terminal.html.csp>), attached as Exhibit 9; Utah Department of Natural Resources, Table 2.1: U.S. Recoverable Coal Reserves at Producing Mines by State, 1994-2010 (available at <http://geology.utah.gov/emp/energydata/statistics/coal2.0/pdf/T2.1.pdf>), attached as Exhibit 10.

<sup>49</sup> ERD at ES-1.

DSL appropriately asked the applicant to explain why the lease at Port Westward allowed explicitly for future in-water work, whereas the application submitted to DSL states that no further removal or fill will be needed. In response, Ms. Kerns is completely unable to explain why the application submitted to DSL is inconsistent with the lease that Ambre signed for Port Westward. Instead, she again sets forth nothing more than an unsupported statement, this time suggesting that Ambre will not need to conduct any in-water work or removal-fill for facilities that can be used for over-water transfer of coal into OGVs. If this is so, then why did Ambre specifically include lease terms that allowed it to conduct these very activities? Ms. Kerns is completely unable to reconcile the inconsistencies between Ambre's lease at Port Westward and the application it submitted to DSL.

#### **D. DSL Lacks Adequate Information on the Project's Impacts to Human Health and the Environment**

As we discussed in the First Comment Letter, several studies have demonstrated that Powder River Basin coal is subject to the risk of spontaneous combustion.<sup>50</sup> As Ms. Fox discusses in her report, PBR coals "are well known to result in significant handling and storage difficulties as they are very dusty and flammable."<sup>51</sup> Moreover, as Dr. Fox concludes, the "ER fails to acknowledge, let alone quantify and address, these risk of upset issues."<sup>52</sup> DSL has no information on how Ambre proposes to manage millions of tons of coal in way that can prevent the safety risks that would result from the spontaneous combustion of coal in a rail car, in a barge or in a storage pile. Moreover, those risks threaten aquatic resources, the public that uses the Columbia River, as well as the personnel and general public in and around the export terminal at Port Morrow. Without having information from Ambre on how it intends to manage coal to prevent risks to public health and safety, DSL should either request more information or simply deny the permit.

In addition, Over 350 Oregon health professionals and public health advocates, including 145 physicians, object to the transportation of coal through Oregon and along/within the Columbia Gorge for export to Asia.<sup>53</sup> They believe the risks to human health from massive coal shipments across Oregon, down the Columbia River and through Oregon communities are significant. They want to prevent new sources of morbidity and mortality in Oregon.

Specifically, they have asked Governor Kitzhaber to prevent the state of Oregon from promoting or facilitating any coal export infrastructure or related transportation in Oregon. They call on him to examine a comprehensive Health Impact Assessment (to include cumulative effects) and a comprehensive Environmental Impact Statement before

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<sup>50</sup> First Comment Letter at 13-14.

<sup>51</sup> Fox Report *at* 1.

<sup>52</sup> *Id.*

<sup>53</sup> Position statement of Concerned Oregon Physicians on coal exports. Ex. 97.

any coal export facility or transport is approved by any state agency.

As we have stated, the numerous potential impacts to human health and public safety weigh heavily in favor of DSL delaying a decision until the federal government as first conducted an appropriate environmental review. Those potential impacts are discussed below. At this time, DSL have adequate information at this time to determine that the project would protect public health and safety, and the permit should therefore be either delayed or denied.

### **1. Immediate and Long-term Threats to Drinking Water**

The proposed project places at risk the drinking water supply to the city of Boardman. Water is supplied to over 3,000 residents from wells that sit on the shores of the Columbia River near the project area. Most of these wells tap water from an unconfined aquifer that communicates directly with the river. Any pollution of the Columbia River threatens the quality of drinking water for Boardman.

If water quality is damaged, water quantity is threatened as well. What are the alternative sources of drinking water available to city residents and businesses if their current source is damaged? What would be the cost to clean up the city's wells? What would be the cost to establish new, alternative sources of drinking water?

Contamination of the river and drinking water supplies can occur with diesel emissions and diesel spills both during project construction and during the ongoing operation of the project, which relies on continuous activity of barge tows, related vessels and vehicles. Other chemical spills or spillage of polluted ballast water can likewise threaten drinking water supplies. During project construction, there will be disturbance and suspension of toxic sediment, further increasing risk to drinking water. There will be increased risk of river pollution from stormwater runoff and from potential release of processed and unprocessed waste water from the project. The increased risk of barge groundings and catastrophic accidents also threatens Boardman's drinking water.

Contamination of the river and drinking water supplies can also occur from coal dust and coal spills. Coal will be delivered in open top rail cars to the site. Regular movement of uncovered rail cars and all forms of conveyance of coal from rail car to barge will result in the release of fugitive coal dust, which can further contaminate the Columbia River and drinking water supplies.

All of these issues are discussed in other places in our comments and in the attached expert reports.

### **2. Immediate and Long-term Threats from Diesel Particulate Matter and Coal Dust**

In the environmental justice section of our comments, we discuss the air quality  
Columbia Riverkeeper *et al.* Second Public Comment  
Coyote Island Terminals, LLC Removal-Fill Permit Application  
Page 18

modeling that was conducted and the potential adverse impacts to human health and the environment. We are concerned about the impacts of diesel particulate matter, which is associated with:

- impaired pulmonary development in adolescents;
- increased cardiopulmonary mortality and all-cause mortality;
- measurable pulmonary inflammation;
- increased severity and frequency of asthma attacks, ER visits, and hospital admissions in children;
- increased rates of myocardial infarction (heart attack) in adults; and
- increased risk of ischemic stroke.

Threats associated with acute and chronic exposure to coal dust include:

- chronic bronchitis;
- emphysema;
- pulmonary fibrosis and
- environmental contamination through the leaching of toxic heavy metals.

### **3. Threats Associated with Noise Exposure**

Noise along the rail route, noise associated with project construction and noise associated with regular operation of the project can cause:

- cardiovascular disease, including increased blood pressure, arrhythmia, stroke, and ischemic heart disease;
- cognitive impairment in children;
- sleep disturbance and resultant fatigue, hypertension, arrhythmia, and increased rate of accidents and injuries; and
- exacerbation of mental health disorders such as depression, stress and anxiety, and psychosis.

### **4. Threats from Frequent Long trains at Rail Crossings**

Threats from frequent long trains at rail crossings all along the route from the Powder Basin and near the project area will mean:

- delayed emergency medical service response times; and
- increased accidents, traumatic injury and death.

### **5. Threats from Increased levels of Ozone, Mercury, Sulfur Compounds**

Several recent studies have shown that powerful spring trade winds can carry Asian pollution into the atmosphere above North America. Some of the imported pollution descends to the surface, where it affects ground-level concentrations of ozone, mercury, sulfur compounds and soot. Ground-level ozone can cause severe respiratory

problems, including asthma, in susceptible individuals.

## **6. Threats Associated with Derailments**

There were over 18 derailments of coal trains in the US this summer, one at Mesa, WA near the Columbia River and others leading to fatalities. The ERD fails to disclose the risk of to human health from a huge increase in coal train traffic along the route to and from the Powder Basin and near the project area.

## **7. Threats from Increased Levels of Mercury Deposition**

A 2008 study found that Asian emissions of mercury contribute 18% of springtime mercury concentrations at Mount Bachelor. Snowpack runoff ends up in our rivers and lakes where the mercury contaminates the fish we eat. Pregnant women and children are particularly vulnerable to the toxic effects of mercury. Mercury is a potent neurotoxin that can damage developing brains in fetuses and children.

## **8. Threats of Injury to Tribal Fishers**

The ER discloses that half the barges and associated tows will be traveling down the Columbia River at night. This activity threatens the safety of members of the Yakama Nation, who often exercise their treaty rights to fish during the night.

## **9. Threats to In-water Recreational Activities near Hood River**

The ERD fails to adequately describe how the dramatic increase in barge traffic during the day will increase risk for injury and mortality among people recreating who traverse and travel along the Columbia River near Hood River.

## **10. Threats to Air Quality in North Portland**

The ERD discloses that there will be a need to raise a bridge near Portland when water levels are high so that barges and tows can pass to Port Westward. That activity will lead to interruption of car and truck traffic leading to a steep increase in idling, an acute increase in air pollution and increased risk to human health. The ERD fails to adequately disclose and identify these risks.

## **11. Threats to Environmental Justice Communities**

The ER fails to adequately disclose the increase in risks to Environmental Justice communities. These concerns are documented in July, 2012 letter from the state's Environmental Justice Task Force to Governor Kitzhaber.<sup>54</sup> They include, but are not

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<sup>54</sup> Environmental Justice Task Force letter to Governor Kitzhaber on coal transport. Ex. 90.

limited to, concerns that diesel emissions and coal dust associated with coal transport would exacerbate the already disproportionate health inequities experienced by low-income and minority communities in North and Northeast Portland.

## **12. Threats to Human Health Triggered by Climate Change**

The ERD fails to adequately disclose impacts from the transport and burning of coal including, but not limited to, increased temperature and heat-related illness, more frequent and more violent storms, coastal flooding, an increase and change in distribution of infectious diseases and hunger and starvation related to climate-related food shortages.<sup>55</sup>

### **E. DSL Lacks Adequate Information on the Project's Climate Change Impacts.**

Ambre's consideration of the potential climate impacts of the Morrow Pacific Project is completely inadequate. Climate disruption remains one of our most significant challenges; science has shown that warming of the climate system is unequivocal and that failure to mitigate climate change will impose tremendous global economic, environmental, social and security risks. The State of Oregon has a clear priority to reduce reliance on fossil fuels and greenhouse gas emissions, and the issue therefore deserves greater consideration by the applicant.

The Morrow Pacific Project will process nearly 9 million tons of coal per year, considerably more than is currently burned within the state of Oregon at the Boardman coal-fired power plant. Combustion of coal produces carbon dioxide, one of the primary greenhouse gases ("GHG") contributing to global climate instability that has a number of serious, adverse environmental and economic impacts within Oregon. Combustion of coal also generates large volumes of conventional pollutants that are harmful to people and the environment. Operation of the Project will also cause significant increases in GHG emissions and conventional pollutants from the transportation of coal from the Interior west to Asia. Finally, issuance of the Permit will result in increased mining in the interior west, with all of its attendant harm to public lands, water supply, wildlife, and public health and safety.

Despite the Project's considerable GHG footprint, Ambre does not address the climate impacts "due to coal combustion by the end user" and goes on to state:

Coal that would otherwise be purchased from the MPP will be purchased or acquired from other sources in Asia, Australia, Indonesia, Russia, South Africa, or other locations. In this context, the annual quantity of coal represented by the proposed project (8.0 MMT per year) is such a small fraction of Asian coal that it

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<sup>55</sup> See Alan Lockwood, MD, *The Silent Epidemic* 2012 Massachusetts Institute of Technology pp. 165-191.

would be easily replaced by other coal courses, resulting in no net differences in coal combustion in Asia regardless of whether or not the MPP proceeds.<sup>56</sup>

We disagree. The coal exported by the Morrow Pacific Project and the other proposed projects in Oregon and Washington will result in an increase in total carbon dioxide emissions than would otherwise occur in the absence of this project. The applicant's claim to the contrary is based on faulty economic reasoning. The economic logic is straightforward. If the coal is competitive in Asian markets, then by definition it costs less than the next most economical source of supply. If it doesn't cost less, then the proposed buyers wouldn't be interested. If coal costs less, they will consume more of it. Further, by introducing a new, low-cost source of supply, this coal will force other suppliers to lower their prices to compete, which will further increase consumption. Dr. Tom Power, Chair Emeritus of the Economics Department at the University of Montana, conducted an economic analysis documenting these simple conclusions.<sup>57</sup> His paper concludes that "proposed coal export facilities in the Northwest will result in more coal consumption in Asia . . . coal exports will mean cheaper coal in Asia, and cheaper coal means more coal will be burned than would otherwise be the case."

Further, the applicant is inaccurate to assert that the availability of coal in other countries ends their responsibility to consider the potential climate impacts. The question this coal will answer is not "Where will China and India get coal tomorrow?" There are plenty of possible answers to that question, as the applicant acknowledges. The question here is "Will Asia build out long-lived, capital-intensive coal burning infrastructure to power their economies?" If they do, there will be no way to prevent catastrophic climate disruption. And the question those countries need to address before they make those long-term capital investments in coal-fired power plants is whether they can tap not just their own coal supplies, but all of the world's cheap coal supplies, and play those suppliers off one another to maintain competitive pressure on coal prices for decades.

**F. The Information Provided by Ambre Does Not Provide Adequate Information on the Alternatives to the Proposed Project.**

Oregon Law requires that an applicant for a removal-fill permit provide to DSL an:

Analysis of alternatives to derive the practicable alternative that has the least practicable reasonably expected adverse impacts on waters of this state. The alternatives analysis must provide the Department all the

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<sup>56</sup> ERD at 3-149.

<sup>57</sup> Dr. Thomas M. Power, *The Greenhouse Gas Impact of Exporting Coal from the West Coast – An Economic Analysis* (available at <http://www.sightline.org/wp-content/uploads/downloads/2012/02/Coal-Power-White-Paper.pdf>). Ex. 8.

underlying information to support its considerations enumerated in OAR  
141-085-0565 \* \* \*.<sup>58</sup>

In particular, the applicant must provide information on “project sites and designs that would” either “avoid impacts to water of this state altogether” or “would minimize adverse impacts to waters of this state,” “with an explanation of why each alternatives is, or is not practicable, in light of the project purpose and need \* \* \*.”<sup>59</sup>

Here, as Ambre discusses in the ERD, the project need – the purpose of the Morrow Pacific Project – is the “Need to Satisfy World Coal Demand.”<sup>60</sup> Based on this overall project need, Ambre suggests that it designed the Morrow Pacific Project to “establish a coal export facility on the West Coast.”<sup>61</sup>

Here too, DSL could conserve substantial state resources by allowing federal agencies to carry out federal permitting and environmental reviews before engaging in an alternatives analysis under state law. As we discussed earlier in these comments, the “world need” for coal exports – which itself is already questionable given the boom-bust nature of the market – does not meet the requirements of Oregon law to demonstrate need on behalf of the Oregon public for the proposed project. But if DSL accepts this statement of need and proceeds to assess the alternatives, then it should surely wait for the federal government to determine first how to meet any perceived need to export America’s energy resources to meet global demand.

Indeed, Ambre has no particular interest in the Port of Morrow or Longview or anywhere else in the Columbia River or on the West Coast. The purpose for the project, as conceded in the ERD, is simply to find anywhere in the Pacific Northwest to site a coal export terminal to serve supposed demand in Asia.<sup>62</sup>

The determination as to whether a coal terminal should be sited in the Pacific Northwest, and if so where, is therefore a matter that should be left to the federal agencies with jurisdiction over these proposed activities. This is the reason that Governor Kitzhaber and so many other state agencies, Tribes and government officials have called on the Corps to prepare an area-wide EIS before considering site-specific proposals. It would be a waste of state resources for DSL to analyze whether the Port of Morrow is the best location for a Pacific Northwest coal export facility if the Corps is going to have to consider and resolve that issue through either area-wide or site-specific environmental reviews under NEPA.

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<sup>58</sup> ORS 196.825(5)(o).

<sup>59</sup> ORS 196.528(5)(o)(A)-(B).

<sup>60</sup> ERD at 1-3.

<sup>61</sup> *Id.*

<sup>62</sup> ERD at 1-5.

Even if DSL were to undertake a thorough alternatives analysis at this point, Ambre has failed to provide a host of information that DSL would need to determine whether alternative sites exist in the Pacific Northwest to export coal to Asia that would avoid or minimize impacts to water of the state.

**1. DSL Should Require Additional Information on the Bulk Mineral Loading Dock Operated by CEMEX.**

Ambre makes a number of important conclusions regarding the CEMEX facility, which should be confirmed by DSL through a request for further information. In particular, Ambre alleges that the No Action alternative (Alternative A) would involve coal export through the CEMEX facility and that this course of action would require no further removal or fill activities. The information included in the ERD is inadequate to allow DSL to verify independently these statements, and DSL should therefore obtain from Ambre the data and information necessary to do so.

First, Ambre claims that the CEMEX dock and loader “has the capacity to handle coal loading.”<sup>63</sup> Ambre does not discuss the extent to which the existing facility is currently used by CEMEX for transportation and shipping activities. DSL should ask Ambre to describe the current activities at the CEMEX facility and how it determined that additional capacity is available.

Second, Ambre claims that it has entered into a non-binding memorandum of understanding with CEMEX, which outlines the terms of a lease that would not require a section 10 permit prior to the commencement of coal export activities. DSL should require that Ambre provide a copy of that memorandum of understanding and should seek further clarification from Ambre as to how the existing facilities can be used without the need for a RHA Section 10 or Clean Water Act Section 404 permit.

Third, Ambre claims that it does not need to obtain a Section 10 permit for immediate implementation of the MPP through the CEMEX dock alternative.<sup>64</sup> In addition, Ambre claims that, “[w]ithout improvements to the existing infrastructure, the loader would allow operations of 3.5 MMT of coal annually.”<sup>65</sup> However, Ambre also states that use of the CEMEX loader and dock “requires additional dolphin installation, which would crowd adjacent facility.”<sup>66</sup> These statements in the ERD are inconsistent. DSL should therefore independently verify what potential in-water work would need to take place under No Action Alternative Alternative A, and the extent of improvements necessary to allow operations of 3.5 MMT of coal annually through the CEMEX loader and dock.

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<sup>63</sup> ERD at 1-11.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at Appendix A.

Fourth, Ambre states that the CEMEX loader and dock do not have a “personnel walkway paralleling the docking and mooring structures, but with proper training and fall protection equipment, workers would be able to safely perform duties associated with barge loading operations.”<sup>67</sup> DSL should confirm this information by obtaining from Ambre detailed schematics on the existing facilities and descriptions of how Ambre would provide for personnel access to the dock consistent with OSHA requirements and without requiring any additional removal-fill operations or a Section 10 permit.

Based on the limited information contained in the ERD, Ambre has not described why or why not the CEMEX facility is a “practicable” option as required by ORS 196.528(5)(o)(A)-(B). In the ERD, Ambre apparently rejects the CEMEX facility because of a limited capacity<sup>68</sup>, and in other places it claims that it could not upgrade the loader because the lease would be entered into in an as-is basis.<sup>69</sup> But nowhere does Ambre state whether or not a coal export terminal would be “practicable” at the CEMEX facility and/or what criteria Ambre has used to determine practicability. DSL should ask Ambre to do so before issuing a decision on the requested permit.

## **2. DSL Should Require Further Information on the Proposed Millennium Bulk Terminals Coal Export Facility in Longview, Washington.**

As all the stakeholders are well aware by now, the Morrow Pacific Project is but one of several West Coast coal export proposals. Ambre has also proposed to develop a coal export terminal in Longview, Washington, which would have capacity for up to 44 million metric tons of coal per year or more.<sup>70</sup> As we discussed in our First Comment Letter, the Millennium proposal has been marked by a history of dishonesty and misstatements on the part of Ambre, as it originally withheld the true extent of its plans with respect to the Longview site, before it withdrew those plans in favor of a larger project.

Despite promoting its plans for coal export at Longview on its web site, to agencies and to the public, Ambre now does an abrupt about face to downplay the likelihood of coal export through Longview in its ERD. In an ironic twist, even though Ambre is moving forward with a facility that would have more than five times the capacity than the Morrow Pacific Project, Ambre claims in the ERD that it “eliminat[ed] MBTL [Millennium] as an alternative.”<sup>71</sup> Ambre has supposedly eliminated Millennium

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<sup>67</sup> ERD at 2-20.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 1-12.

<sup>70</sup> *See, e.g.,* Millennium Bulk Terminals – Longview Submits Permits to Revitalize Brownfield Port Facility in Longview (February 23, 2012) (available at <http://millenniumbulk.com/2012/02/23/millennium-bulk-terminals-longview-submits-permits-to-revitalize-brownfield-port-facility-in-longview/>). Ex. 11.

<sup>71</sup> ERD at 2-23.

as an alternative because “one limiting factor of this alternative is the operating timeline for completion.”<sup>72</sup> A “projected timeline of 2015 for initial functioning operation of a coal transfer facility, exceeds acceptable Applicant parameters (Berk, 2012).”<sup>73</sup>

DSL should reject outright this effort on the part of Ambre to divorce the Millennium proposal from the Morrow Pacific Project. First of all, Ambre’s argument that the timing of Millennium disqualifies it as an alternative is patently unreasonable. In a September 13, 2012 article, the *Oregonian* reported that Clark Mosely, president and CEO of Ambre Energy’s Morrow Pacific Project, stated that the projected start-up date for the Morrow Pacific Project is mid-2014. If that is the case, why then would a 2015 start-up date for Millennium disqualify it as an alternative to the Port of Morrow project? The representation in the ERD that Ambre rejected the Millennium project based on timing simply lacks any credibility.

In this case, Ambre is attempting to segment these two projects, asking that government agencies place artificial blinders on their analyses thereby preventing a comprehensive, regional analysis of whether and how coal export should move forward in the Pacific Northwest. Our organizations and the tens of thousands citizens we represent are not in favor of coal export from either of these two facilities. But the notion that DSL or the Corps would analyze each of these facilities in isolation from the other, without taking a regional look at the issue of coal export is unacceptable. It would be fundamentally irresponsible for DSL to ignore Millennium as an alternative to the Port of Morrow project given the fact that both projects are owned by the same company, they would export the same coal from the same source to the same consumers, and both projects are currently in the permitting and environmental review stage at precisely the same time. It is untrue and simply dishonest for Ambre to claim that one project could not serve as an alternative to the other. We can only hope that DSL will not take the same illogical approach.

Again, this issue weighs heavily in favor of our request that DSL allow the federal government to take the lead on the environmental review of the proposed project. Once an alternatives analysis is completed by the federal government, DSL can use that to inform its decision-making process. If DSL insists on moving forward at this point, it should deny the permit application and supporting materials as containing an inadequate discussion of alternatives, including the Millennium and CEMEX alternatives, or DSL should require additional information from the applicant as discussed above.

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

**G. DSL Requires More Information on the Environmental Justice Implications of its Proposed Action.**

Senate Bill 420, passed in 2007, requires DSL, as a natural resource agency, to “consider the effects of the action on environmental justice issues.”<sup>74</sup> The Governor’s office has defined environmental justice as follows:

Environmental justice is equal protection from environmental and health hazards, and meaningful public participation in decisions that affect the environment in which people live, work, learn, practice spirituality and play. “Environmental justice communities” include minority and low-income communities, tribal communities, and other communities traditionally underrepresented in the public process.<sup>75</sup>

Here, DSL needs to consider the environmental justice implications of its proposed action. The relevant action in this case would be the issuance of a removal-fill permit for the Morrow Pacific Project. For the reasons set forth below, the information included in Ambre’s ERD is inadequate, and we therefore request that DSL conduct its own independent analysis of how the proposed MPP would impact environmental justice communities.

The first point to emphasize is that Ambre acknowledges that the project area near the Port of Morrow includes environmental justice communities based upon the minority population and income criteria.<sup>76</sup> In particular, Morrow County has the second highest Hispanic population in the state at 31.3 percent.<sup>77</sup>

We are very concerned, however, that Ambre has not considered the demographics of people that use the river between Morrow County and Columbia County, in particular Tribal members that spend long periods of time in and around the banks of the Columbia, as well as the port areas, rail lines, shipping channels and other transportation corridors. Because the Columbia River is such an important part of their cultural tradition, their activities center around the river, and those activities include utilization of historic fishing sites that are protected by treaty. We are also concerned that they ERD’s focus on the census block group as a means of identifying environmental justice communities would similarly fail to identify Native Tribes that use a narrow portion of the areas adjacent to the Columbia for their cultural activities. We therefore ask that DSL consult directly with the Tribes to determine how they use the Columbia River, its banks, and the areas that could be impacted by the coal transfer, barging,

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<sup>74</sup> ORS 182.545(1).

<sup>75</sup> Oregon Governor’s Office, Environmental Justice Task Force: Environmental Justice Defined (2012) (available at [http://www.oregon.gov/Gov/Pages/gnro/environmental\\_justice.aspx](http://www.oregon.gov/Gov/Pages/gnro/environmental_justice.aspx)). Ex. 12.

<sup>76</sup> ERD at 3-82.

<sup>77</sup> *Id.*

transloading and shipping to determine whether the environmental justice analysis should include a discussion of impacts to Tribal members.

Moreover, even assuming that the ERD correctly identifies environmental justice communities, which it does not, the analysis of impacts to those communities is fundamentally flawed. For instance, in identifying potential adverse impacts associated with air quality, the ERD includes summary statements about the level of effect and brushes aside any concerns about diesel emissions or coal dust and potential impacts to neighboring communities.

We have attached the results of an air modeling analysis that identifies significant exceedances of National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide (NO<sub>2</sub>) and fine particulate matter (PM<sub>2.5</sub>), which includes, for NO<sub>2</sub>, a large portion of the City of Boardman.<sup>78</sup> Furthermore, the study also identifies likely deposition of nitrogen into surface water, which DSL must also include in its analysis.<sup>79</sup> We have included below a detailed discussion of the health effects of the pollutants and a summary of the findings from the modeling study.

## **1. Nitrogen Oxides (NOx)**

### **a. Background**

Nitrogen oxides (NOx) are a family of gases of various oxidation states of nitrogen, including N<sub>2</sub>O (nitrous oxide), NO (nitric oxide), N<sub>2</sub>O<sub>3</sub> (nitrogen trioxide or nitrogen sesquioxide), N<sub>2</sub>O<sub>4</sub> (dinitrogen tetroxide or nitrogen peroxide), NO<sub>2</sub> (nitrogen dioxide), N<sub>2</sub>O<sub>5</sub> (dinitrogen pentoxide), N<sub>3</sub>O<sub>4</sub> (trinitrogen tetroxide), and NO<sub>3</sub> (an unstable state).<sup>80</sup> These gases are toxic by inhalation, particularly nitrogen dioxide.<sup>81</sup>

Nitrogen oxides are emitted by both anthropogenic and natural sources, but on-road mobile sources are the largest source of NOx, followed by electrical generating units and non-road mobile sources.<sup>82</sup> Similarly, the majority of nitrogen dioxide in the ambient air is caused by the oxidation of nitric oxide emitted from combustion sources that burn fuel at a high temperature.<sup>83</sup> Nitrogen dioxide can spread farther from roadways than many other pollutants emitted by on-road mobile sources,<sup>84</sup> and can present adverse

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<sup>78</sup> AMI Environmental, AERMOD Modeling of Air Quality Impacts of the Proposed Morrow Pacific Project – Final Report (October 2012). Ex. 13.

<sup>79</sup> We request that DSL include an analysis of NO<sub>2</sub> deposition as it relates to the removal-fill criteria in addition to its relevance for the environmental justice analysis.

<sup>80</sup> Lewis, Richards J., Sr., *Condensed Chemical Dictionary*, 796 (13th ed. 1997).

<sup>81</sup> *Id.*

<sup>82</sup> Integrated Science Assessment for Oxides of Nitrogen – Health Criteria, 2-2. EPA/600/R-08/07, July 2008 (hereafter, “ISA for Oxides of Nitrogen”). Ex. 14.

<sup>83</sup> 76 Fed. Reg. 57105

<sup>84</sup> 75 Fed. Reg. 6474 at 6,479; ISA for Oxides of Nitrogen, 2-3.

health effects wherever humans are exposed. In addition, NO<sub>2</sub> is a major precursor to ozone,<sup>85</sup> and can also lead to the formation of ambient particulate matter,<sup>86</sup> both of which pose further human health risks.

Notably, the young, elderly, and those with preexisting respiratory disease are potentially more susceptible to adverse health impacts from exposure to nitrogen dioxide.<sup>87</sup>

### **b. Health Impacts of Nitrogen Dioxide.**

NO<sub>2</sub> exposure can have a wide range of health impacts depending on the length of exposure and various other factors. Epidemiologic research establishes a plausible relationship between NO<sub>2</sub> exposures and adverse health effects ranging from the onset of respiratory symptoms to hospital admission.<sup>88</sup>

In a review of the National Ambient Air Quality Standards, the 1993 NO<sub>x</sub> Air Quality Criteria Document (1993 AQCD) concluded that the two greatest health concerns of ambient or near-ambient concentrations of NO<sub>2</sub> were, first, increased airway responsiveness in asthmatic individuals after short-term exposures and, second, increased respiratory illness among children after longer-term exposures.<sup>89</sup>

In 2008, the EPA published an Integrated Science Assessment (2008 ISA) on the health criteria for oxides of nitrogen, asserting that, “[n]ew evidence confirms previous findings in the 1993 AQCD that short-term NO<sub>2</sub> exposure is associated with increased airway responsiveness, often accompanied by respiratory symptoms, particularly in children and asthmatics.”<sup>90</sup> The 2008 ISA recognized the complicated relationship between NO<sub>2</sub> and other traffic-related pollutants but, based on numerous studies, panels, respiratory symptoms, emergency department visits, and hospital admissions, concluded that “the evidence supported a direct effect of short-term NO<sub>2</sub> exposure on respiratory morbidity,” and that “the relationship between NO<sub>2</sub>...and other respiratory effects is likely causal...”<sup>91</sup> Studies associated short-term NO<sub>2</sub> exposure to increased risk of susceptibility to viral and bacterial infections, airway inflammation, increased airway hyperresponsiveness in asthmatics, respiratory symptoms in asthmatic children, and increased emergency department visits and hospital admissions for respiratory causes.<sup>92</sup> In addition to finding sufficient evidence to infer a likely causal relationship between short-term NO<sub>2</sub> exposure and respiratory morbidity, the 2008 ISA found the evidence

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<sup>85</sup> 76 Fed. Reg. 57105 at 57303-57304; ISA for Oxides of Nitrogen, 2-6.

<sup>86</sup> 76 Fed. Reg. 57105 at 57303; ISA for Oxides of Nitrogen, 2-6.

<sup>87</sup> 75 Fed. Reg. 6475 at 6480.

<sup>88</sup> 76 Fed. Reg. 57105 at 57304; ISA for Oxides of Nitrogen, 5-15.

<sup>89</sup> 75 Fed. Reg. 6475 at 6479-6480.

<sup>90</sup> ISA for Oxides of Nitrogen, 5-15.

<sup>91</sup> ISA for Oxides of Nitrogen, 5-15 to 5-16; *see* 75 Fed. Reg. 6475 at 6480.

<sup>92</sup> ISA for Oxides of Nitrogen, 5-5.

suggestive, though not sufficient, to infer a causal relationship between short-term NO<sub>2</sub> exposure and all-cause and cardiopulmonary-related mortality.<sup>93</sup>

The 2008 ISA also concluded that the evidence is “suggestive but not sufficient to infer a causal relationship” between long-term NO<sub>2</sub> exposure and respiratory morbidity.<sup>94</sup> Epidemiologic studies found decrements in lung function growth to be associated with long-term NO<sub>2</sub> exposure. Animal testing indicates that exposure to high concentrations of NO<sub>2</sub> would cause emphysema in humans, though it only appeared to be a major concern at much higher levels of NO<sub>2</sub> exposure than the current ambient levels.<sup>95</sup>

A summary of conclusions from the 2008 ISA about the health outcomes of short- and long-term exposure to nitrogen dioxide can be found in Table 5.1-1 of the document.<sup>96</sup>

## **2. Particulate Matter (PM)**

### **a. Background on Particulate Matter.**

Particulate matter (PM) refers to a broad class of diverse substances that exist as discrete particles of varying size.<sup>97</sup> Such particles are produced by a variety of anthropogenic and natural sources, though most fine particles are produced by anthropogenic combustion and transformations of gas emissions, like NO<sub>x</sub>, in the atmosphere.<sup>98</sup> The composition of the particles can vary greatly and can remain in the atmosphere for weeks and disperse over thousands of miles.<sup>99</sup> Depending on the size, these particles can be inhaled and penetrate the respiratory tract to cause significant adverse health effects.<sup>100</sup>

### **b. Health Effects of Particulate Matter.**

As with nitrogen oxides, the EPA published an Integrated Science Assessment for Particulate Matter in 2009 (2009 ISA). The 2009 ISA summarizes evidence of health effects associated with exposure to PM<sub>2.5</sub>, PM<sub>10-2.5</sub>, and ultrafine particles (UFPs).<sup>101</sup> The ISA concluded that short-term exposure to ambient PM<sub>2.5</sub> for only hours to days is causal

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<sup>93</sup> ISA for Oxides of Nitrogen, 5-15; *see* 75 Fed. Reg. 6475 at 6480.

<sup>94</sup> ISA for Oxides of Nitrogen, 3-2 to 3-3, 5-12; *see* 75 Fed. Reg. 6475 at 6481.

<sup>95</sup> ISA for Oxides of Nitrogen, 5-4; 75 Fed. Reg. 6475 at 6479-6480

<sup>96</sup> ISA for Oxides of Nitrogen, 5-5 to 5-6.

<sup>97</sup> Environmental Protection Agency, *Integrated Science Assessment for Particulate Matter*, 4-2. EPA/600/R-08/139F, December 2009, attached as Exhibit 15 (hereafter, “ISA for PM”); 76 Fed. Reg. 57105 at 57302.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> 76 Fed. Reg. 57105 at 57302.

<sup>101</sup> 76 Fed. Reg. 57105 at 57302; *see* ISA for PM.

of cardiovascular effects such as altered vasomotor function and increased hospital admissions and emergency department visits for ischemic heart disease and congestive heart failure.<sup>102</sup> Such exposure is also likely to be causal of respiratory effects related to chronic obstructive pulmonary disease, respiratory infections, and exacerbation of asthma symptoms in children.<sup>103</sup> The ISA also concludes that short-term exposures to ambient PM<sub>2.5</sub> is causal of all-cause, respiratory-, and cardiovascular-related mortality.<sup>104</sup>

Regarding long-term exposure to ambient PM<sub>2.5</sub>, the ISA concludes is causal of cardiovascular effects, likely to be causal of respiratory effects such as “decrements in lung function growth, increased respiratory symptoms, and asthma development...,” and causal of cardiovascular mortality.<sup>105</sup> Finally, the ISA concludes that the evidence is suggestive that long-term exposure to PM<sub>2.5</sub> may cause adverse reproductive and developmental effects as well as cancer.<sup>106</sup>

Regarding PM<sub>10-2.5</sub>, the ISA concludes that the evidence is suggestive that short-term exposure to the particles causes cardiovascular effects, such as hospitalization for ischemic heart disease,<sup>107</sup> respiratory effects, and mortality.<sup>108</sup> Similarly, the ISA concludes that the evidence about UFPs is suggestive that exposure to the particles causes cardiovascular effects, “such as changes in heart rhythm and blood vessel function,”<sup>109</sup> and respiratory effects, though it is inadequate to suggest causality for mortality.<sup>110</sup>

For a summary of conclusions from the 2009 ISA about the health outcomes of short- and long-term exposure to particulate matter can be found in Table 2-6 of the document.<sup>111</sup>

### **3. Project Air Quality Impact Modeling**

The health effects detailed above can be put in context by looking at the air quality impacts of the proposed operations at the Port of Morrow and Port Westward of the Morrow Pacific Project (MPP), as analyzed by AMI Environmental in its October 2012 report, AERMOD Modeling of Air Quality Impacts of the Proposed Morrow Pacific Project (2012 report).<sup>112</sup> The 2012 report analyzes air quality impacts of the

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<sup>102</sup> ISA for PM, 2-9; 76 Fed. Reg. 57105 at 57303.

<sup>103</sup> ISA for PM, 2-10; 76 Fed. Reg. 57105 at 57303.

<sup>104</sup> ISA for PM, 2-10.

<sup>105</sup> ISA for PM, Section 2.3.1.2.

<sup>106</sup> *Id.*

<sup>107</sup> 76 Fed. Reg. 57105 at 57302-57303.

<sup>108</sup> *See* ISA for PM, 2-32; 76 Fed. Reg. 57105 at 57302-57303.

<sup>109</sup> 76 Fed. Reg. 57105 at 57303.

<sup>110</sup> *See* ISA for PM, 2-32; 76 Fed. Reg. 57105 at 57303.

<sup>111</sup> *See* ISA for PM, 2-32.

<sup>112</sup> AERMOD Modeling of Air Quality Impacts of the Proposed Morrow Pacific Project. AMI Environmental, October 2012.

proposed MPP from NO<sub>x</sub>, PM<sub>2.5</sub>, and SO<sub>2</sub> emissions, and concludes that there would be “large exceedances of the NO<sub>2</sub> 1-hour NAAQS of 196 µg/m<sup>3</sup> (by 9-63 times the NAAQS at Port of Morrow and by 19-24 times the NAAQS at Port Westward), the 24-hour PM<sub>2.5</sub> at Port of Morrow (by 2.4-5.9 times the NAAQS of 35 µg/m<sup>3</sup>) and the annual NO<sub>2</sub> NAAQS at Port of Morrow (by 12-17 times the NAAQS of 100 µg/m<sup>3</sup>).”<sup>113</sup> The 2012 report predicts that these exceedances will occur from the project emissions alone, without the addition of background concentrations, and that NAAQS exceedances will occur in both Oregon and Washington.<sup>114</sup> Although the 2012 report does not predict any significant impacts from SO<sub>2</sub> emissions, it does predict substantial nitrogen deposition around the Port of Morrow.<sup>115</sup>

The adverse health impacts of heightened concentrations of ambient NO<sub>2</sub> and PM, discussed above, are gravely concerning for projects like the MPP where the air quality impacts would so drastically exceed the national ambient air quality standards. As stated in the 2012 report, “the proposed Morrow Pacific Project will cause very adverse air quality impacts in both Oregon and Washington.”<sup>116</sup> Given the causal connections of NO<sub>x</sub> and PM to adverse health outcomes that were detailed in the EPA’s ESI documents, it is clear that these types of very adverse air quality impacts will translate into the very adverse human health impacts and environmental justice implications.

We are also concerned about additional impacts to environmental justice communities, including fugitive coal dust along rail lines and the banks of the Columbia River where Tribal fishermen spend their time, conflicts between barge and OGV traffic and Tribal fishing activities protected by treaty, and contamination and/or resuspension of contaminated sediments, in addition to the other impacts discussed earlier in our comments.

## CONCLUSION

For the reasons set forth above, DSL does not have adequate information at this time, based upon the application, the ERD and the BA, to issue the requested removal-fill permit. Furthermore, we strongly urge DSL to wait for federal agencies, including the Corps and NMFS, to conclude their review and analysis of the Port of Morrow Project before doing so. It would be particularly apt for DSL to wait for federal agency action in this case because Governor Kitzhaber has asked that the Corps conduct a comprehensive area-wide analysis of the numerous coal export proposals and their potential impacts on human health and the environment.

Pursuant to OAR 141-085-0560(4)(a), DSL may “as a result of the public review process or the Department’s investigations, request that the applicant submit

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<sup>113</sup> *Id.* at 27.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

supplemental information and answer additional questions prior to the Department making the permit decision.” Here, DSL should request from the applicant a biological opinion from NMFS as well as an analysis of environmental effect from the Corps conducted pursuant to the National Environmental Policy Act. At bare minimum, DSL should request further information on the issues we raised above.

In the alternative, DSL should deny the permit because it is unable to determine that the statutory and regulatory criteria have been met, as discussed above. In doing so, the Department must issue written findings,<sup>117</sup> and those findings should reflect the acknowledged impacts to salmon and steelhead and the current failure to quantify or otherwise assess the extent of those impacts.

Thank you for considering our input and for conducting the careful and objective review that is required in order to protect the public interest in the resources of Oregon state waters and the Columbia River. We would be happy to discuss these comments with you in more detail, and we look forward to learning of DSL’s decision on how to proceed.

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<sup>117</sup> OAR 141-085-0565(7).

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**PUBLIC COMMENTS FROM COLUMBIA RIVERKEEPER *ET AL.*  
APPLICATION OF COYOTE ISLAND TERMINALS, LLC  
OREGON DEPARTMENT OF STATE LANDS: APP0049123  
OCTOBER 31, 2012  
INDEX OF EXHIBITS**

<b>Exhibit #</b>	<b>Title</b>	<b>Date</b>
1	Columbia Riverkeeper et al. letter to Army Corps of Engineers, Re: Application of Coyote Island Terminals, LLC	September 21, 2012
2	Lockage Data from U.S. Army Corps of Engineers	Undated
3	Scott Learn, <i>New Dawn Fuel Barge Ran Aground in the Columbia River, Response Was confusion, Report Says</i> , Oregonian	January 20, 2010
4	Susan Buchanan, <i>River Traffic Resumes After Barge Accident But Threats Remain</i> , The Louisiana Weekly	June 4, 2011
5	New York Daily News, <i>Barge Collision in Mississippi River Causes Oil Spill</i>	February 18, 2012
6	Columbia Gorge Windsurfing Association Resolution No. 2012-01	April 19, 2012
7	National Wildlife Federation Report, <i>The True Cost of Coal: The Coal Industry's Threat to Fish and Communities in the Pacific Northwest</i>	2012
8	Dr. Tomas M. Power, <i>The Greenhouse Gas Impact of Exporting Coal from the West Coast – An Economic Analysis</i>	Undated
9	Mike Gorrell, <i>Arch Coal's port purchase could help Utah mines</i> , The Salt Lake Tribune	January 13, 2011
10	Utah Department of Natural Resources, Table 2.1: U.S. Recoverable Coal Reserves at Producing Mines by State, 1994-2010	2011 - 2012
11	Millenium Bulk Terminals – Longview LLC, <i>Press Release Re: Millenium Bulk Terminals-Longview Submits Permits to Revitalize Brownfield Port Facility in</i>	February 23, 2012

11	Millenium Bulk Terminals – Longview LLC, <i>Press Release Re: Millenium Bulk Terminals-Longview Submits Permits to Revitalize Brownfield Port Facility in Longview</i>	February 23, 2012
12	Oregon Governor’s Office, Environmental Justice Task Force: Environmental Justice Defined	2012
13	AMI Environmental, AERMOD Modeling of Air Quality Impacts of the Proposed Morrow Pacific Project – Final Report	October 2012
14	Environmental Protection Agency, <i>Integrated Science Assessment for Oxides of Nitrogen – Health Criteria (EPA/600/R-08/07)</i>	July 2008
15	Environmental Protection Agency, <i>Integrated Science Assessment for Particulate Matter (EPA/600/R-08/139F)</i>	December 15, 2009
16	Power Past Coal video, <i>Paddle Past Coal! Columbia River Anti-Coal Padde.</i>	October 23, 2012
17	<i>In Re: Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions (Finance Docket No. 35557). Opening Evidence and Argument of Western Coal Traffic League et al.</i>	October 1, 2012
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