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Sent via U.S. mail and email

RE: Rebuilding the Port Westward dock to facilitate a fossil fuels shipping terminal requires a consolidated Environmental Impact Statement.

Dear U.S Army Corps of Engineers, Portland District:

Columbia Riverkeeper, the Northwest Environmental Defense Center, the Center for Biological Diversity, and the Sierra Club (collectively "Riverkeeper") hereby request that the U.S. Army Corps of Engineers (Corps) prepare a comprehensive Environmental Impact Statement (EIS) assessing the cumulative impacts of rebuilding and expanding the dilapidated

Beaver Army Terminal Dock at Port Westward¹ (hereafter, the “Port Westward dock” or “dock”) to enable various proposals to ship and export fossil fuels from the dock and through the Columbia River Estuary.

Riverkeeper is deeply concerned by several recent applications to rebuild and expand the Port Westward Dock, and by the massive fossil fuels shipping terminal that would rely on those dock construction and renovation projects. Riverkeeper is a nonprofit public interest group working to protect and restore the water quality of the Columbia River and all life connected to it, from its headwaters to the Pacific Ocean. Riverkeeper’s members and supporters have diverse interests in the Columbia River and the surrounding landscape, including fishing, boating, swimming, and working in and near waters that would be impacted by a fossil fuels shipping terminal at Port Westward.

A series of decisions that would turn the Columbia River Estuary into a fossil fuels shipping corridor deserves the most searching and transparent environmental review possible. Thus far, the Corps’ disjointed approach to analyzing these projects under the National Environmental Policy Act (NEPA) has not provided a comprehensive or realistic picture of the threats facing the Columbia River Estuary or the people living there. The Corps now has the opportunity, and the responsibility, to prepare an EIS addressing the effects of rebuilding and expanding the Port Westward Dock and the fossil fuels shipping and export projects that rebuilding the dock would facilitate.

Riverkeeper expressly requests that the Corps place copies of this letter and the accompanying exhibits in the Corps’ files on Ambre Energy’s² proposed Morrow Pacific Project (NWP 2012-056), the Port of St. Helens’ application to rebuild the lower section of the dock (NWP 2013-427), and Global Partners LP’s (Global)³ dock expansion application (NWP 2007-998).

Riverkeeper also respectfully requests a joint meeting with the Corps’ Portland District and the NOAA Fisheries Service to discuss the need for an EIS related to fossil fuels shipping from the Port Westward dock and the potential impacts to Columbia River salmon and steelhead.

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¹ See Global Partners LP, *Joint Permit Application for Dock Modernization*, Exh. 4 (June 11, 2013) (online at <http://docs.dsl.state.or.us/PublicReview/docview.aspx?id=1652650&dbid=0>).

² For the purposes of this letter, the name “Ambre Energy” includes and means Ambre Energy’s subsidiaries Coyote Island Terminals LLC and Pacific Transloading LLC.

³ For the purposes of this letter, the names “Global Partners LP” and “Global” include and mean Global’s wholly-owned subsidiary Cascade Kelly Holdings LLC, doing business as Columbia Pacific Bio-Refinery.

a. The Port Westward dock is currently in disrepair and cannot safely berth even mid-sized cargo vessels.

The Port Westward dock is an old wooden dock that has fallen into disrepair.⁴ The federal government constructed the dock in the 1940s⁵ in support of the war effort.⁶ Until very recently, there has been no significant shipping activity at the dock for years, or possibly even decades.⁷ Without extensive structural repairs and upgrades, the dock will remain in disrepair, unsafe for use by large commercial vessels.⁸

In its current configuration and state of disrepair, no location at the dock can safely berth even mid-sized cargo vessels,⁹ let alone the massive Panamax vessels that the Port of St. Helens' tenants and potential tenants intend to use.¹⁰ The upstream end of the dock—where Global¹¹ proposes berthing Panamax oil tankers¹²—was never designed to berth *any* type of vessel.¹³ The downstream end of the dock would require extensive repairs before even mid-sized cargo vessels could berth there safely.¹⁴ This means that the entire dock, in its current state, is unfit to receive and berth the types of vessels that the Port of St. Helens' tenants intend to—and to some extent already do—use there.¹⁵

⁴ Exhibit 1. Port of St. Helens, *Permit Application for Project No. NWP 2013-427 2* (Dec. 9, 2013) (“The dock is currently is [sic] disrepair.”).

⁵ Exhibit 2. *Biological Assessment, Geotechnical Report, and Wake Wash Log for Global's Joint Permit Application for Dock Modernization*, Exh. 18, p.1-1 (2013).

⁶ The Clatskanie Chief, *My How Things Have Changed* (June 14, 2012) (online at <http://www.clatskaniechiefnews.com/2012/06/13/june-14-2012-4/>).

⁷ Exhibit 3. Norwest Engineering, *Beaver Dock Evaluation 2* (2004) (Stating that, as of 2004, no significant shipping berthing had occurred for “several years.”). It appears that no other significant shipping took place at the dock between 2004 and late 2012, when Global Partners LP began loading crude oil onto ocean-going barges at the dock.

⁸ Exhibit 4. Port of St. Helens, *Resolution No. 2013-82 1* (Explaining that Global's use of the dock, in its current state of disrepair, to load ocean-going oil barges has caused “piles under the dock to jar loose”); *see also* Exhibit 1 at Table 3 (Explaining that, without the proposed repairs at the downstream end of the dock, the “[d]ock will continue to fall into disrepair.”); *see also* Exhibit 2, Exh. 17, p.17 (Explaining that delaying repairs to the dock would cause the “continued degradation of the facility structure.”).

⁹ Exhibit 5. Port of St. Helens, *Supplemental Information on Permit Application for Project No. NWP 2013-427*, Appdx. A, p.1 (The “dock *historically* was capable of handling . . . mid-sized cargo vessels.”) (emphasis added); *see also* Exhibit 1, p.2 (Explaining that the purpose of the proposed dock maintenance is to bring the “Port Westward dock *back into* proper operating condition”) (emphasis added).

¹⁰ Exhibit 1, p.2 (“[T]here is no reliable way to transfer horizontal loads (ship loads) into the piles.”).

¹¹ *See* Exhibit 6. *Purchase agreement between JH Kelly Holdings LLC and Global Partners LP* (Jan. 22, 2013) (Global Partners LP purchased Cascade Kelly Holdings LLC, d/b/a/ Columbia Pacific Bio-refinery, from JH Kelly Holdings LLC).

¹² *See* Global Partners LP, *Joint Permit Application for Dock Modernization 3* (June 11, 2013).

¹³ *See* Exhibit 3, p.3 and Reference Drawing 1 (“Only the downstream part of the dock . . . is intended for berthing ships.”).

¹⁴ *See* Exhibit 5, p.1 (“[T]he proposed maintenance will allow the downstream berth to safely accommodate up to a mid-sized cargo vessel.”); *see also* Exhibit 3, p.3 (Explaining that, unless the missing camel log system is replaced for the downstream berth, “the dock could be damaged during ship berthing.”).

¹⁵ Exhibit 1, p.3 (“The downstream portion [of the dock] needs . . . maintenance and replacement of missing components to accommodate use by existing . . . users.”).

b. The Port of St. Helens and its tenants are comprehensively re-building and expanding the dysfunctional Port Westward dock.

Viewed collectively, recent applications to ‘repair’ the Port Westward dock would transform the existing, dilapidated dock into an expanded, fully functional platform for fossil fuels shipping. Despite the fact that the Port of St. Helens and its tenants call these proposed projects “maintenance,”¹⁶ repairs,¹⁷ or modernizations,¹⁸ these projects would collectively replace a significant (but undisclosed) amount of the dock’s existing physical structure and result in fundamental changes to the dock’s uses, character, and capabilities. These are not a series of minor repairs; this is a coordinated re-build and expansion of a major structure in the Columbia River Estuary, which will pave the way for new and greatly expanded uses of the Columbia River with associated environmental impacts.

Global’s proposed in-water construction work¹⁹ would transform the upstream end of the Port Westward dock from an over-water driveway²⁰ into a berth for 900-foot ocean-going Panamax vessels,²¹ and replace a significant portion of the existing dock’s structure.²² The insertion of catwalks, four new breasting dolphins, and three new mooring dolphins (entailing 120 new steel pilings)²³ would enable Panamax vessels—for the first time ever—to moor safely at the dock. Global’s application also provides for removing and replacing a significant amount of the dock’s structure. Specifically, the application states that Global would remove and replace 75 linear feet of the dock itself, the trash boom, and the piles supporting each.²⁴ More broadly, the application would allow Global to replace an *unlimited number* of the existing dock pilings if Global ‘deems’ them structurally inadequate during construction.²⁵ In other words, Global could replace most of the upstream part of the dock under the language of its permit application. Global is not just repairing or modernizing the dock, Global is rebuilding the upstream end of the dock in a different form. After Global is done, neither the physical structure nor the function of the upstream portion of the dock will be the same.

At the downstream end of the dock, the Port of St. Helens proposes installing critical structural elements that are currently missing—work that the Port of St. Helens abandoned 35

¹⁶ Exhibit 1, p.3.

¹⁷ *Id.*

¹⁸ Global Partners LP, *Joint Permit Application for Dock Modernization 2*, 3 (June 11, 2013).

¹⁹ *See generally Id.*

²⁰ *See* Exhibit 3, p.3 and Reference Drawing 1 (“Only the downstream part of the dock . . . is intended for berthing ships.”).

²¹ *See* Global Partners LP, *Joint Permit Application for Dock Modernization 3* (June 11, 2013).

²² *E.g. Id.* at 5 (“75 [linear feet] of the upstream dock will be temporarily removed. This will include removal of thirty five (35) 16” creosote timber piles. The deck and piling will be *replaced* with a new deck and twenty (20) 16” steel piles.”) (emphasis added).

²³ *See Id.* at 5.

²⁴ *See Id.* at 5 and Exh. 5 (June 11, 2013).

²⁵ *See Id.* at 5 (“During construction, it is likely that existing piles will be encountered that will be deemed structurally inadequate. Such piles will be replaced with steel piles in like kind.”).

years ago.²⁶ Because of this 35-year lapse in attention to the dock, the downstream end of the dock “lacks a reliable way to transfer horizontal loads (ship loads) into the piles” which are supposed to support the dock and hold vessels in place.²⁷ To make the downstream section of the dock capable of safely withstanding the horizontal load of mid-sized vessels, the Port of St. Helens proposes to install pile caps, replace the bull rail, and install an entirely new truss system on the back of the dock.²⁸ These are not minor repairs, but a rebuilding of the dock to a capacity that it has not had for at least 35 years.

Together, Global’s and the Port’s proposed construction projects would transform a dock that is in disrepair,²⁹ long neglected,³⁰ and literally falling apart³¹ into a dock that could safely accommodate Panamax vessels, ocean-going oil barges, a floating coal transloader, or other similarly-sized vessels. A significant portion of the physical structure of the resulting dock would be new, and the functionality of the resulting dock would be entirely new. The Port of St. Helens’ application sums up the coordinated nature of the projects: “The dock has two berths. The upriver portion will be reconstructed and extended under a separate permit application . . . * * * The downstream portion needs . . . maintenance and replacement of missing components to accommodate use by existing and future users.”³² The Port and its tenants are coordinating to rebuild and expand a major structure in the Columbia River Estuary to enable fossil fuels shipping on a scale the Columbia has never experienced.

c. The new, expanded Port Westward dock would enable several fossil fuels shipping or export proposals in the Columbia River Estuary.

There are at least three proposals to ship and export fossil fuels from Port Westward, or to expand current fossil fuel shipping traffic significantly. Ambre Energy proposes to use the dock to transload coal from river barges to Panamax vessels. Global proposes to massively increase its shipping of crude oil, which it transfers from train to ship at the dock. NW Innovation Works (a joint venture between the Chinese government and British Petroleum) proposes to use the dock to ship methanol to China on board Panamax vessels.³³ None of these projects are viable without a re-built Port Westward dock capable of safely handling Panamax and mid-sized cargo vessels.

²⁶ See Exhibit 1, p.2 (“The proposed maintenance will address the deferred maintenance that has not taken place over the last 35 years and allow the dock to properly berth vessels.”).

²⁷ Exhibit 5, Appdx. A, p.1; *see also, e.g.*, Exhibit 4, p.1 (Explaining that Global’s use of the dock, in its current state of disrepair, to load ocean-going oil barges has caused “piles under the dock to jar loose . . .”).

²⁸ Exhibit 5, Appdx. A, p.1; Exhibit 1.

²⁹ Exhibit 1, p.2 (“The dock is currently is [sic] disrepair.”).

³⁰ Exhibit 1, p.2 (“The proposed maintenance will address the deferred maintenance that has not taken place over the last 35 years and allow the dock to properly berth vessels.”).

³¹ See Exhibit 4, p.1 (Explaining that Global’s use of the dock, in its current state of disrepair, to load ocean-going oil barges has caused “piles under the dock to jar loose . . .”).

³² Exhibit 1, p.3.

³³ Pers. Comm. with Rick Desimone, NW Innovation Works’ Washington State Director of Communications and External Affairs (March 17, 2014).

Ambre Energy’s proposed Morrow Pacific Project would require the re-construction of the upstream *and* downstream portions of the dock. According to Ambre Energy, the Morrow Pacific Project would entail berthing Panamax vessels at the dock,^{34, 35} where they would be loaded with coal by a transloading barge that would be moored at the downstream end of the dock when not in use.³⁶ But the current dock cannot safely berth Panamax vessels, or the coal transloader. The downstream end of the dock, even if fully re-built, could only accept mid-sized cargo vessels,³⁷ not 900-foot, 65,000-deadweight-ton Panamax vessels. In its current condition, the downstream end of the dock is deteriorating under the stress of berthing ocean-going oil barges that are between just 244 and 422 feet long,³⁸ and therefore would need to be rebuilt for Ambre to moor even its similarly-sized coal transloading barge there.³⁹ And the upstream end of the dock was never “intended for berthing ships,”⁴⁰ so the mooring and berthing dolphins proposed by Global are the only way any part of the dock could become useable by Panamax ships receiving Ambre’s coal. Without the proposed dock re-build, the Morrow Pacific Project is not viable because the dock cannot safely berth Panamax vessels, or even the smaller 400-foot coal transloading barge.

Global’s crude oil shipping operation, both in its current and expanded forms, requires rebuilding the dock. As of November, 2013, Global’s oil barges were causing structural damage to the downstream part of the dock,⁴¹ which demonstrates that Global (if it continues to use ocean – going barges to ship oil) will require the construction requested by the Port of St. Helens. If, as seems more likely in light of Global’s recent applications to expand its oil shipping operations,⁴² Global intends to use Panamax vessels to ship oil, Global will certainly require the dock expansions it is proposing.⁴³ Clearly, Global needs to expand and rebuild the Port Westward dock to facilitate its crude oil shipping operations.

³⁴ Exhibit 7. Ambre Energy, *Environmental Review Document for the Morrow Pacific Project* 2-17, 2-16, 3-40, 4-40 and Figures 1-10 and 2-4 (Aug. 2012).

³⁵ Exhibit 8. Ambre Energy, *Biological Assessment for the Morrow Pacific Project* 3-12 (April 2012) (Stating that the Morrow Pacific Project would require roughly 133 Panamax vessels per year outbound from Port Westward.).

³⁶ See Exhibit 9. Letter from Oregon Department of State Lands to Ambre Energy regarding lease requirements for the Morrow Pacific Project 1 (April 14, 2014); see also Exhibit 7, p.2-15.

³⁷ Exhibit 1, p.2 (“The proposed maintenance will rectify the concerns and allow the dock to berth mid-sized cargo vessels.”).

³⁸ Exhibit 10. Global Partners LP, *Appendix A of the Draft Oil Spill Contingency Plan for the Columbia Pacific Bio-Refinery 2* (Oct. 1, 2013).

³⁹ See Exhibit 7, p.2-15 (“The transloader will be a . . . minimum of 400 feet in length.”).

⁴⁰ Exhibit 3, p.3 and Reference Drawing 1 (“Only the downstream part of the dock . . . is intended for berthing ships.”).

⁴¹ See Exhibit 4, p.1 (Explaining that Global’s use of the dock, in its current state of disrepair, to load ocean-going oil barges has caused “piles under the dock to jar loose . . .”).

⁴² See Exhibit 11. Global Partners LP, *Application to Oregon DEQ for a Standard Air Contaminant Discharge Permit 1* (Aug. 23, 2013) (Global requests authorization to increase its throughput of crude oil to 1.84 billion gallons per year.).

⁴³ See generally Global Partners LP, *Joint Permit Application for Dock Modernization* (June 11, 2013).

Finally, NW Innovation Works' methanol export proposal would also rely on expanding the dock to accommodate Panamax vessels. NW Innovation Works has indicated that it intends to use the Port Westward dock,⁴⁴ and the Port of St. Helens has taken steps to set aside land for the methanol project near the dock.⁴⁵ NW Innovation Works intends to export methanol in "ships designed to carry bulk liquid cargo,"⁴⁶ in other words, Panamax vessels.⁴⁷ As explained above, the dock cannot accommodate Panamax vessels without the proposed re-build and expansion. NW Innovation Works, along with Ambre Energy and Global, would require a rebuilt Port Westward dock.

d. The fossil fuels shipping projects facilitated by a re-built and expanded Port Westward dock would have cumulatively significant environmental impacts.

Regardless of how the Corps intends to discharge its NEPA obligations regarding the various projects involving the dock, the environmental impacts of the proposed dock reconstruction, including fossil fuels shipping and export, will be cumulatively significant within the meanings of 40 C.F.R. §§ 1508.7, 1508.25(c)(3), and 1508.27(b)(7).

The Corps' NEPA analysis must look beyond the construction impacts at the Port Westward dock; the Corps must address the environmental impacts of shipping and exporting fossil fuels on board Panamax vessels through the Columbia River Estuary. The Council on Environmental Quality's (CEQ) regulations require the Corps to analyze the indirect effects of the proposed dock alterations. 40 C.F.R. § 1508.25(c)(2). Indirect effects, for NEPA purposes, are those effects "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.8(b). Indirect effects include the ways in which human use of an area changes because of an action, and the consequential effects of those changed uses on air, water, and ecosystems. *Id.* The effects of new and expanded fossil fuels shipping are indirect effects of the proposed dock alterations because the dock alterations are intended, and necessary, to facilitate the fossil fuels shipping projects, and such activity is therefore a "reasonably foreseeable" result. *Id.* Accordingly, the Corps' NEPA analysis must look beyond the construction work at the dock and address the impacts of fossil fuel shipping on the Columbia River's air, water, and ecosystems.

Furthermore, the Corps must decide whether those indirect effects of the proposed dock construction—the fossil fuel shipping projects—may have cumulatively significant environmental impacts. *See* 40 C.F.R. § 1508.27(b)(7); *see also Ocean Advocates v. U.S. Army*

⁴⁴ *See* NW Innovation Works' website at <http://nwinnovationworks.com/> (Stating that "[t]he Port [of St. Helens] has indicated that it will provide services using its existing dock" to support methanol export).

⁴⁵ *See* Exhibit 12. Port of St. Helens, *Resolution No. 2014-13* (Feb. 12, 2014).

⁴⁶ *See* NW Innovation Works' website at <http://nwinnovationworks.com/> ("The Port [of St. Helens] has indicated that it will provide services using its existing dock.").

⁴⁷ Pers. Comm. with Rick Desimone, NW Innovation Works' Washington State Director of Communications and External Affairs (March 17, 2014).

Corps of Engineers, 402 F.3d 846 (9th Cir. 2005). “Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.” 40 C.F.R. § 1508.27(b)(7). Because the dock reconstruction would turn the lower Columbia River Estuary into a fossil fuels shipping thoroughfare,⁴⁸ all of these actions and projects are “related” within the meaning of 40 C.F.R. § 1508.27(b)(7) and the Corps must consider whether their cumulative effects may be significant.

At a minimum, the Corps should consider the cumulative impacts of the dock expansion projects *and* the fossil fuel shipping projects that the dock expansions would facilitate. The CEQ’s regulations require the Corps to analyze the cumulative environmental impact of proposed actions when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. 40 C.F.R. §§ 1508.7, 1508.25(c)(3). The projects the Corps should consider when assessing the cumulative impact of the dock reconstruction include, but are not limited to:

- Global’s proposal to expand the upstream portion of the dock to accommodate Panamax vessels to facilitate Global’s current and expanded shipments of Bakken crude oil from the Port Westward dock (NWP 2007-998);
- Ambre Energy’s proposed Morrow Pacific Project to export coal, using the Port Westward dock (NWP 2012-056);
- The Port of St. Helens’ application to rebuild the lower section of the dock (NWP 2013-427),⁴⁹ and;
- NW Innovation Works’ proposal to ship methanol from Port Westward.

All of these projects are reasonably foreseeable, and all have the potential to impact the Columbia River in similar ways. Accordingly, NEPA compels the Corps to assess and describe

⁴⁸ See Exhibit 13. Sightline Institute, *The Northwest’s Pipeline on Rails* (Aug., 2013); see also Exhibit 14. ForestEthics, *Off the Rails* (2014).

⁴⁹ In addition to the NEPA issues identified in this letter, Riverkeeper notes that the Corps may not use a “Nationwide 3” general permit to authorize the activities proposed by the Port of St. Helens in permit application NWP 2013-427. Nationwide 3 general permits authorizing maintenance and repairs to structures or fill are only applicable to “[t]he repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, . . . provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification.” See 77 Fed. Reg. 10184, 10270 (Feb. 21, 2012). As explained above, the dock is not ‘currently serviceable’ in any safe manner for even mid-sized cargo vessels, let alone Panamax-class ships. And even if the Corps had ‘previously authorized’ the Port Westward dock (which seems unlikely), the ‘uses specified or contemplated’ in that authorization would not have included fossil fuels shipping and export in the manner now proposed. Accordingly, the Corps cannot authorize the work described in the Port’s application NWP 2013-427 using a Nationwide 3 general permit.

the cumulative impact that all of these fossil fuel shipping activities would have on the Columbia River.

Riverkeeper and other organizations have previously submitted extensive comments detailing the direct, indirect, and cumulative impacts of some of the fossil fuels shipping projects at issue, especially Global's crude oil shipping proposal⁵⁰ and the Morrow Pacific Project.⁵¹ Those comments explain why, individually and cumulatively, those projects will have significant environmental impacts for NEPA purposes. Riverkeeper re-incorporates those comments and the exhibits and attachments to those comments, which are all currently in the Corps' possession, by reference here, especially with respect to why the impacts of those projects will be significant as defined by the NEPA significance factors at 40 C.F.R. § 1508.27.

Briefly, the cumulative impacts of fossil fuel shipping in the Columbia River Estuary will be significant, with reference to the NEPA intensity factors, because:

- Shipping fossil fuels could affect public health or safety to a high degree because of the possibility for explosions or fires that could directly kill or injure people,⁵² and the potential for toxic air and water pollution that could pose health risks. 40 C.F.R. § 1508.27(b)(2).
- The Columbia River Estuary and the Port Westward area⁵³ where fossil fuel shipping would occur contain unique characteristics such as proximity to historic or cultural resources, prime farmlands, wetlands, and ecologically critical areas. 40 C.F.R. § 1508.27(b)(3).
- Shipping dangerous and explosive Bakken crude oil through the Columbia River Estuary has never been attempted before, and therefore involves unique or unknown risks to humans⁵⁴ and fish.⁵⁵ 40 C.F.R. § 1508.27(b)(5).
- Vessel traffic and potential spills may adversely affect sites or structures listed in or eligible for listing in the National Register of Historic Places and may cause loss or

⁵⁰ Exhibit 15. Columbia Riverkeeper *et al.*, *Comments to Corps on Global's Joint Permit Application for Dock Modernization* (Aug. 13, 2013); *see also* Exhibit 16. Columbia Riverkeeper, *Letter to Corps Regarding Increased Oil Shipping Caused by Global's Joint Permit Application for Dock Modernization* (Nov. 1, 2013).

⁵¹ Exhibit 17. Columbia Riverkeeper *et al.*, *Comments to Corps on EIS Scoping for the Morrow Pacific Project* (May 3, 2012).

⁵² *See* Exhibit 18. *Pictures of oil-train explosion in Lac-Megantic, Quebec.*

⁵³ *See* Exhibit 19. Columbia Riverkeeper, *Comments to Columbia County on the Port of St. Helens' Application to Rezone Land at Port Westward from Agricultural to Industrial Use* (May 3, 2013).

⁵⁴ *See* Bloomberg.com, *Bakken Crude More Dangerous to Ship Than Other Oil: U.S.* (Jan. 2, 2014) (online at <http://www.bloomberg.com/news/2014-01-02/bakken-crude-more-dangerous-to-ship-than-other-oil-u-s-.html>).

⁵⁵ *See* Exhibit 20. John P. Incardona, *et al.*, *Deepwater Horizon crude oil impacts the developing hearts of large predatory pelagic fish*, *Proceedings of the National Academy of Sciences* (2014).

destruction of significant scientific, cultural, or historical resources in the Columbia River Estuary to a high degree. 40 C.F.R. § 1508.27(b)(8).

- The proposed projects would adversely affect endangered or threatened species, including but not limited to anadromous salmonids, and their designated critical habitat, to a very high degree.⁵⁶ 40 C.F.R. § 1508.27(b)(9).

All of the NEPA significance factors listed above militate in favor of finding that the impacts of fossil fuel shipping in the Columbia River Estuary would be ‘significant,’ and the presence of just one of these factors can be enough compel the preparation of an EIS. *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 865 (9th Cir. 2005).

Since Riverkeeper submitted its comments on Global’s crude oil shipping proposal and the Morrow Pacific Project, new information has emerged about the impacts and scale of new fossil fuel shipping proposed at Port Westward. These new developments make it even clearer that the cumulative impacts of the fossil fuel shipping proposals would be significant. The impacts of proposed increases in crude oil shipping and new methanol shipping must be added to the impacts of previously proposed projects when assessing the environmental and social effects of fossil fuels shipping such as:

- Threats of a crude oil, coal, methanol, or vessel fuel spill in the Lower Columbia River Estuary;
- Impacts of wake stranding on juvenile salmonids;⁵⁷
- Impacts of wake action on low-lying wetlands and other ecologically critical areas in the Columbia River Estuary;
- Impact of cooling water discharges (thermal pollution) from Panamax and other vessels, and from on-shore operations related to fossil fuels shipping and processing at Port Westward;
- Increased transport of invasive species into the Columbia River Estuary in ballast water and attached to ships;

⁵⁶ Exhibit 21. NOAA Fisheries Service, *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead* (2011); Exhibit 22. Fresh *et al.*, *NOAA Technical Memorandum NMFS-NWFSC-69: Role of the Estuary in the Recovery of Columbia River Basin Salmon and Steelhead* (2005).

⁵⁷ Exhibit 23. Pearson *et al.*, *A Study of Stranding of Juvenile Salmon by Ship Wakes Along the Lower Columbia River Using a Before-and-After Design: Before-Phase Results* (2006).

- Impacts on air quality from diesel and other air emissions from vessels, trains, and on-shore operations related to fossil fuels shipping and processing at Port Westward;
- Increased danger of crude oil fire and explosion due to increased volume of crude oil proposed to be shipped;
- Impacts to recreational, tribal, and other commercial users of the Columbia River Estuary due to increased vessel traffic and potential spills, and;
- Impacts of global warming and ocean acidification on the Columbia River Estuary due to burning and extraction of fossil fuels.

New information has come to light about the amount of crude oil Global intends to ship, which increases the probable environmental impact of each of the above-listed factors. In 2013, Global repeatedly protested that it could not, and was not seeking to, increase crude oil shipping from the dock.⁵⁸ But it is clearer than ever that Global does intend—and that the dock expansion would facilitate—massively increasing the volume of crude oil it ships from the Port Westward dock; up to 1.84 billion gallons per year.⁵⁹ For the purposes of the NEPA analysis, this increase in crude oil shipping calls into serious doubt Global’s assertion that expanding the dock to accommodate Panamax vessels carrying crude oil would result in 33% to 50% fewer total vessel trips through the estuary.⁶⁰ In light of the amount of oil that Global now intends to ship, the Corps must re-assess the number of Panamax vessel trips that would actually occur as a result of NWP 2007-998, the resulting environmental and social impacts of that vessel traffic, and the increased risk of a catastrophic crude oil spill or explosion in the Columbia River Estuary.

Additionally, a new and well-defined proposal exists to site and operate a methanol refinery and export operation at Port Westward.⁶¹ That proposed facility would use Panamax ships⁶² to export methanol to China, and therefore the viability of that project depends on the proposed expansion and re-construction of the Port Westward dock. The Corps has the right and the responsibility to ascertain the amount of vessel traffic that would occur as a result of the proposed methanol export project, and to assess the impacts of that vessel traffic on the

⁵⁸ See Letter from Dan Luckett to Steve Gagnon responding to Columbia Riverkeeper’s Comments on Global Partners LP’s Joint Permit Application for Dock Modernization (Sep. 5, 2013) (Stating that “Cascade’s . . . dock improvements do not facilitate or expand transloading of . . . crude oil” and that the dock “improvements . . . would not increase the volume [of oil] handled.”).

⁵⁹ See Exhibit 24. Port of St. Helens, *Resolution No. 2013-81* (increasing the number of oil trains that Global is allowed to bring into Port Westward); see also Exhibit 11, p.1.

⁶⁰ Global Partners LP, *Joint Permit Application for Dock Modernization* 11 (June 11, 2013).

⁶¹ Exhibit 12; see also <http://nwinnovationworks.com/>.

⁶² Pers. Comm. with Rick Desimone, NW Innovation Works’ Washington State Director of Communications and External Affairs (March 17, 2014).

Columbia River estuary in addition to the vessel traffic impacts of the other fossil fuel shipping proposals.

- e. **Proposed actions that would facilitate or entail fossil fuel shipping from the Port Westward dock are ‘cumulative actions’ that must be analyzed together in a single EIS.**

NEPA requires the Corps to prepare one EIS covering all of the proposed projects that would facilitate or entail shipping fossil fuels from the Port Westward dock through the Columbia River Estuary.⁶³ Under CEQ’s NEPA regulations, when several proposed actions may have cumulatively significant impacts, those actions are termed “cumulative actions” and must all be addressed in the same EIS. 40 C.F.R. § 1508.25(a)(2); *Oregon Natural Resources Council v. Marsh*, 832 F.2d 1489, 1497 (9th Cir. 1987) (“CEQ guidelines require that ‘cumulative actions’ be considered together in a single EIS . . .”). The Corps must prepare one EIS covering all of these proposed projects that would facilitate or entail fossil fuel shipping from the dock because these projects are “cumulative actions.” The four proposals are ‘proposed actions’ within the meaning of 40 C.F.R. § 1508.25(a)(2) because they have been proposed but have not yet occurred or been approved by the Corps. As explained in section (d) above, these proposals may have cumulatively significant environmental impacts, requiring an EIS.⁶⁴ Accordingly, they are “cumulative actions” that must be analyzed together in a single, comprehensive EIS. 40 C.F.R. § 1508.25(a)(2); *see also Wetlands Action Network v. United States Army Corps of Eng’rs*, 222 F.3d 1105, 1118 (9th Cir. 2000) *overruled on other grounds in Wilderness Soc’y v. United States Forest Serv.*, 630 F.3d 1173, 1180–81 (9th Cir. 2011).

Conclusion

Riverkeeper remains deeply concerned by recent proposals to rebuild the dilapidated Port Westward dock into an international fossil fuels shipping hub. The consequences of increased vessel traffic and the risk of spills or accidents involving fossil fuels deserve a comprehensive and thorough EIS that examines the effects on the Columbia River Estuary and the people living there. Riverkeeper is especially troubled by Global’s proposal to ship 1.84 billion gallons of crude oil from Port Westward every year; history demonstrates that “[w]here oil goes, spills

⁶³ Specifically, these proposed projects include: (1) Global’s proposal to expand the upstream portion of the dock to accommodate Panamax vessels to facilitate Global’s current and expanded shipments of Bakken crude oil from the Port Westward dock (NWP 2007-998); (2) Ambre Energy’s proposed Morrow Pacific Project to export coal, using the Port Westward dock (NWP 2012-056); (3) The Port of St. Helens’ application to rebuild the lower section of the dock (NWP 2013-427), and; (4) NW Innovation Works’ proposal to ship methanol from Port Westward.

⁶⁴ An agency must prepare an EIS when substantial questions exist about whether the proposed project “may” significantly degrade the environment. *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1239 (9th Cir. 2005) (emphasis in original); *see also* 42 U.S.C. § 4332(2)(C). “This is a low standard.” *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006); *California Wilderness Coalition v. U.S.*, 631 F.3d 1072, 1097 (9th Cir. 2011).

follow.”⁶⁵ Piecemealing environmental review of the dock’s reconstruction and use into multiple, disjointed Environmental Assessment documents does not give the public, NOAA Fisheries Service, or the Corps a clear picture of the environmental impacts, and does not comply with the NEPA regulations at 40 C.F.R. § 1508.25(a)(2).

Sincerely,



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⁶⁵ Exhibit 25. Boomburg Buisnessweek, *25 Years of Oil Spills* 14, 15 (March 23, 2014).

Enclosures:

- Exhibit 1: Port of St. Helens, *Permit Application for Project No. NWP 2013-427*
- Exhibit 2: *Biological Assessment, Geotechnical Report, and Wake Wash Log for Global's Joint Permit Application for Dock Modernization*
- Exhibit 3: Norwest Engineering, *Beaver Dock Evaluation*
- Exhibit 4: Port of St. Helens, *Resolution No. 2013-82*
- Exhibit 5: Port of St. Helens, *Supplemental Information on Permit Application for Project No. NWP 2013-427*
- Exhibit 6: *Purchase agreement between JH Kelly Holdings LLC and Global Partners LP*
- Exhibit 7: Ambre Energy, *Environmental Review Document for the Morrow Pacific Project*
- Exhibit 8: Ambre Energy, *Biological Assessment for the Morrow Pacific Project*
- Exhibit 9: *Letter from Oregon Department of State Lands to Ambre Energy regarding lease requirements for the Morrow Pacific Project*
- Exhibit 10: Global Partners LP, *Appendix A of the Draft Oil Spill Contingency Plan for the Columbia Pacific Bio-Refinery*
- Exhibit 11: Global Partners LP, *Application to Oregon DEQ for a Standard Air Contaminant Discharge Permit*
- Exhibit 12: Port of St. Helens, *Resolution No. 2014-13*
- Exhibit 13: Sightline Institute, *The Northwest's Pipeline on Rails*
- Exhibit 14: ForestEthics, *Off the Rails*
- Exhibit 15: Columbia Riverkeeper, *Comments to Corps on Global's Joint Permit Application for Dock Modernization*
- Exhibit 16: Columbia Riverkeeper, *Letter to Corps Regarding Increased Oil Shipping Caused by Global's Joint Permit Application for Dock Modernization*
- Exhibit 17: Columbia Riverkeeper *et al.*, *Comments to Corps on EIS Scoping for the Morrow Pacific Project*
- Exhibit 18: *Pictures of oil-train explosion in Lac-Megantic, Quebec*
- Exhibit 19: Columbia Riverkeeper, *Comments to Columbia County on the Port of St. Helens' Application to Rezone Land at Port Westward from Agricultural to Industrial Use*
- Exhibit 20: Incardona, *et al.*, *Deepwater Horizon Crude Oil Impacts the Developing Hearts of Large Predatory Pelagic Fish*
- Exhibit 21: NOAA Fisheries Service, *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead*
- Exhibit 22: Fresh *et al.*, *NOAA Technical Memorandum NMFS-NWFSC-69: Role of the Estuary in the Recovery of Columbia River Basin Salmon and Steelhead*
- Exhibit 23: Pearson *et al.*, *A Study of Stranding of Juvenile Salmon by Ship Wakes Along the Lower Columbia River Using a Before-and-After Design: Before-Phase Results*
- Exhibit 24: Port of St. Helens, *Resolution No. 2013-81*
- Exhibit 25: Boomburg Buisnessweek, *25 Years of Oil Spills*

cc:

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