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Mr. James D. Green
U.S. Army Corps of Engineers
Regulatory Branch
P.O. Box 3755
Seattle, WA 98124-3755
Via email to James.D.Green@usace.army.mil

RE: Burlington Northern Santa Fe Railway Company, 199800519. Comments on Clean Water Act § 404 permit application..

Dear Mr. Green,

Please accept these comments from Columbia Riverkeeper and Northwest Environmental Defense Center (NEDC) on U.S. Army Corps of Engineers (Corps) permit application number 199800519 submitted by Burlington Northern Santa Fe Railway Company (Burlington). Columbia Riverkeeper is a non-profit organization whose mission is to restore and protect the water quality of the Columbia River and all life connected to it. NEDC is a non-profit organization whose mission is to protect the natural environment in the Pacific Northwest. Columbia Riverkeeper and NEDC (hereafter jointly "Columbia Riverkeeper") members use and enjoy the Columbia River, and are concerned about the recreational and ecological effects of filling more than one-half mile of Columbia River shoreline. These comments incorporate by reference the comments submitted by Friends of the Columbia Gorge.

I. Introduction.

The applicant proposes to place 15,600 cubic yards of fill into the Columbia River along 2,900 feet of shoreline to fill a total of 1.57 acres of riparian area. The purpose is to construct a railway siding. Columbia Riverkeeper requests that the Corps deny the Clean Water Act (CWA) section 404 permit because: there are practicable alternatives to the proposed fill; the project will contribute to violations of Washington water quality standards, the project will cause significant degradation of aquatic resources, including jeopardizing threatened and endangered species; and the project is contrary to the public interest.

II. The proposed activity is not water dependent, and there are practicable alternatives to the proposed fill.

40 C.F.R. § 230.12(a)(3)(i) requires a finding of noncompliance when there is a practicable alternative to the proposed discharge that would have a less adverse effect on the aquatic ecosystem. When the proposed activity is not water dependant, non-aquatic practicable alternatives "are presumed to be available, unless clearly demonstrated otherwise." 40 C.F.R. § 230.10(a)(3). The applicant has the burden of clearly demonstrating there are no practicable alternatives. *Northwest Environmental Defense Center v. Wood*, 947 Columbia Riverkeeper Comments, Burlington Northern, 199800519

F. Supp. 1371, 1374 (D. Or. 1996). A major issue in the Burlington application is whether there are any practicable alternatives for a railway siding that would have less adverse effect on the aquatic ecosystem.

Question 1. Is the railway siding water dependant?

“An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” 40 C.F.R. § 320.10(a)(2). Burlington’s Joint Aquatic Resources Permit Application (JARPA) states that other siding expansions have and will occur on the Columbia River mainline. Burlington contends that the proposed Lyle siding will alleviate a key pinch point along the mainline that limits rail capacity.

Question 2. Has the applicant submitted information to demonstrate that a siding is necessary in this region?

Question 3. Where are the other sidings along the Columbia mainline?

Question 4. Has the applicant submitted information detailing other possible siding locations along the line, and why these alternative locations are not practicable?

Question 5. If a siding is necessary in this region, has the applicant submitted alternative designs that would have less adverse impact on the water resource?

Columbia Riverkeeper recognizes that efficient rail traffic is important to our region. Filling a section of the Columbia River, however, is not necessary for a railway siding. The Corps must thoroughly evaluate practicable alternatives.

III. The proposed project will adversely affect water quality for the Columbia River and contribute to violations of Washington’s Water Quality Standards.

The Corps may not permit discharge of fill material if the discharge causes or contributes to violations of any applicable State water quality standards. 33 C.F.R. § 230.10(b)(1). The proposed discharge of 15,600 cubic yards of fill will cause violations of the turbidity and sedimentation standards.

Question 6. How does the applicant plan to comply with the turbidity and sedimentation standards?

Likewise, Washington water quality standards require the protection of beneficial uses, including salmonids and the benthic organisms upon which salmonids rely. Riparian areas provide shelter and shade critical for salmonid survival. While the riparian zone may be currently degraded, dumping 15,600 cubic yards of fill in the river will destroy the riparian vegetation and adversely affect the aquatic life that is dependant upon the vegetation. The applicant plans to replant the area, but adequate regrowth will take time. Prior to revegetation, the river is subject to increased sediment due to the erosion of unvegetated slopes.

Question 7. Does the Corps believe the fill will violate water quality standards for any pollutants? If so, which pollutants and for how long?

Question 8. Does the Corps know the source of the fill material? If not, how can the Corps assure it does not contain toxic materials?

On JARPA Question # 5, the applicant incorrectly stated that the Columbia River is not on the CWA § 303(d) list. In fact, the Columbia River is water quality limited (Washington 303(d) list) for temperature, total dissolved gas, dioxin, and invasive exotic species (Eurasian water-milfoil (*Myriophyllum spicatum*)) at the site of the proposed fill, known as Water Resource Inventory Area 30. The proposed fill may increase the temperature and decrease the dissolved oxygen due to sediment in the fill and erosion of the disturbed slopes. Likewise, the fill will destroy the riparian zone, which will increase the temperature due to lack of shade and increase the likelihood of invasive species. The fill, therefore, will likely increase pollutants for which the Columbia is already water quality limited.

IV. The proposed fill will result in significant degradation of aquatic ecosystems.

The Corps may not permit discharge of fill material if the discharge will result in significant degradation of aquatic ecosystems. 40 C.F.R. § 230.12(a)(3)(ii). The fill of riparian areas is highly discouraged. “From a national perspective, the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by these guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources.” 40 C.F.R. § 230.1(d). “Special sites” includes vegetated shallows, 40 C.F.R. § 240.43, which currently exist in Columbia River at the site of the proposed fill. The proposed fill would significantly degrade vegetated shallows and the riparian area.

Question 9. Is the nearshore area at this site a vegetated shallow or a wetland?

The Corps may not permit a discharge of fill material if the fill jeopardizes the continued existence of any threatened or endangered species under the ESA, or destroys or modifies critical habitat. 40 C.F.R. § 230.10(b)(3). As discussed below, the site is home to multiple threatened and endangered salmonids and the threatened bald eagle.

The applicant claims the project’s riparian mitigation will eventually create an environmental benefit to fish. However, riparian and aquatic habitat is greatly modified as soon as the 2,900 linear feet of habitat is filled. Overall, the fill project significantly degrades over a half mile of shoreline.

The applicant proposes to mitigate only the area section of the bank covered by fill. If the Corps approves the fill, the magnitude of the impact requires far more mitigation than simply planting over the fill.

Question 10. Can the Corps sacrifice habitat today for speculative future benefits?

V. The project is not in the public interest.

The Corps should deny the permit because it is contrary to the public interest, as described in 33 C.F.R. § 320.4. As part of its public interest review, the Corps must consider all cumulative effects of the project, including conservation, economics, aesthetics, environmental concerns, wetlands, historic properties, fish and wildlife values, land use, recreation, water quality, safety, and the general welfare of the people. Previous sections discuss many of these factors. This section focuses on the adverse effects to recreation, safety, and local economies in the Columbia Gorge.

Doug's Beach is a heavily used Washington State Park located between Highway 14 and the Columbia River. Doug's Beach is rated among the best windsurfing locations in the western United States and is used heavily by locals and visitors. In addition to windsurfing, Doug's beach is popular for picnicking, bird-watching, fishing, wildlife viewing, and swimming. Due to the popularity and heavy use of the area, the recreation value of Doug's Beach and this stretch of the river is extremely high. *See* Figure 1.



Figure 1. Photograph of the windsurfers at Doug's Beach State Park. The applicant's proposed fill of 2,900 linear feet in the Columbia River and a railway siding would be adjacent to the park.

A major drawback and danger of Doug's Beach is lack of safe parking and the necessity to cross an active train line to access the river. Currently, the public parks vehicles in a small lot on the shoulder of Highway 14. The parking spaces are aligned perpendicular to the highway. *See* Figure 2. It is our understanding that the proposed railway siding will decrease the size of the parking area and require parallel parking. Lack of safe parking limits the number of visitors who can enjoy the park. In addition, visitors faced with no available parking spaces will cause congestion on the highway by circling the area in search of a space. This endangers both the visitors and other highway users, and slows travel time on Highway 14, a main thoroughfare.



Figure 2. Photograph of parking area at Doug's Beach State Park. View is to the east. Note the heavy use and proximity to Highway 14. The proposed siding would decrease the space available for parking.

River users at Doug's Beach haul their gear, including heavy windsurfing rigs, 300 feet from the parking area, across the railroad line, to the river. The proposed railway siding is located between the parking area and the river. The siding will cause some trains to slow down, change tracks, and wait while the oncoming train passes. This will impede river access by increasing the time a visitor must wait for the trains to pass using the siding. As part of the public interest review, the Corps should require the applicant to provide data that shows the delay required for trains to pass using a siding versus the current single line delay. Further, the addition of a second train line and the associated higher train traffic will increase the risk of public injury.

Question 11. Has the Corps evaluated any data concerning the impact on recreational use at Doug's Beach?

In addition to the parking and access problems, a railway siding will adversely affect the aesthetic enjoyment of windsurfers on the Columbia River. The additional stretch of railway, as well as the sight and noise of an additional train, increases the industrial appearance of the shoreline.

The fill and railway siding will also adversely affect recreational fishing on the Columbia River. The fill and increased train usage will degrade water quality as described in Section III. In addition, the fill will cover aquatic vegetation and macroinvertebrates, which are used as shelter and food by sport fish. Further, the addition of another train on a long stretch of the scenic Columbia Gorge adversely affects the aesthetic and natural qualities enjoyed by fishers.

In addition, the fill and railway siding will adversely affect the aesthetic enjoyment of hikers, sightseers, and photographers in the Columbia Gorge. In protecting the Columbia Gorge National Scenic Area, Congress recognized the importance of preserving the tremendous aesthetic values of this region. Hikers looking down to the river from the public

land above Lyle, WA, and motorists on Highway 14 enjoy the scenic views of the Columbia River. Adding a rail line east of Lyle and increasing the time that trains travel through or idle in this area would have a negative impact on the natural scenery. Likewise, the proposed siding is located across the river from Oregon's Mayer State Park and the popular hiking trail at Rowena Crest. The views from Oregon would be degraded by the increased rail activity associated with this project. In addition, increased train presence would affect wildlife watchers and picnickers at Doug's Beach.

The degradation of Doug's Beach State Park and the natural scenery due to the railway siding would effect the economy of the Columbia River Gorge. Communities in the Columbia River Gorge are increasingly reliant on tourist and recreation dollars. Locating a railway siding next to a heavily used windsurfing beach may decrease the popularity of the park, which has cumulative economic impacts on surrounding communities. In addition, the economy of the Gorge as a region is highly dependant on tourist and recreation revenue, which is cumulatively impacted by increased industrialization.

Question 12. Has the Corps considered how the project would influence recreation and tourist activities in the Columbia Gorge?

Question 13. Has the Corps considered the economic damage of the project in relation to local recreation and tourist activities?

VI. NEPA

The National Environmental Policy Act directs federal agencies to promote efforts which will prevent or eliminate damage to the environment and the biosphere. 42 U.S.C. § 4321. An agency, such as the Corps, must prepare an Environmental Impact Statement (EIS) when it undertakes a major federal action that significantly affects the quality of the human environment. 42 U.S.C. § 4332(2)(c). "Major federal actions" include issuing a permit. 40 C.F.R. § 1508.18(b)(4). The EIS must discuss short and long-term environmental impacts of the proposed action, alternatives to the proposed action, and any irreversible and irretrievable commitments of resources. 42 U.S.C. § 4332(2)(C).

Columbia Riverkeeper urge the Corps to complete an EIS. A key factor in determining whether an action warrants an EIS is whether the project "significantly" affects the quality of the human environment. In determining an action's significance, agencies must consider both the context in which the action will take place and the intensity of the impact. 40 C.F.R. § 1508.27(b). Regarding context, the agency must consider the effect on "society as a whole (human, national), the affected region, the affected interests, and the locality." *Id.* at 1508.27(a). Here, the railway siding project significantly affects the Columbia Gorge region because it degrades a major windsurfing area, degrades scenic vistas for which the Gorge is well-known, and degrades fish and wildlife habitat. On a local level, the proposed action affects recreation and the recreation economy as discussed in Section V.

The Corps must consider the following factors, among others, when evaluating the intensity of the impact as related to significance. 40 C.F.R. § 1508.27

A. Public health and safety.

As discussed in detail above, it is our understanding that the proposed action will modify and reduce the parking area at Doug's Beach State Park. This affects public safety because lack of parking, and the potential need for parallel parking, creates dangerous congestion on Highway 14. In addition, the proposed siding and increased train traffic adjacent to a heavily visited recreation area creates a public safety hazard due to collisions. Further, the trains idling in the railway siding will degrade the air quality.

B. Unique characteristics of the geographic area, such as the proximity to park lands or ecologically critical areas.

The detrimental impact of this project is significant due to its location. First, the proposed siding is located adjacent to Doug's Beach State Park, a recreation area of high value due to the quality of windsurfing. Second, the project would fill over a half mile of shoreline of the Columbia River, an ecological area of national importance for threatened and endangered salmonids. The mainstem Columbia River is unique because all anadromous fish must pass through to reach spawning areas in the Columbia Basin. Thus, the local impact of the fill is compounded by the regional economic and ecologic value of the Columbia River salmonids.

C. The degree to which the possible effects on the human environment are likely to be highly controversial.

The location of this siding project met resistance when first proposed in 1998. Today, the project is even more controversial because the recreational use of the Columbia River near Lyle, WA has increased and the population in the Gorge has grown.

D. The degree to which the action may adversely affect an endangered or threatened species or its critical habitat.

The application recognizes multiple salmonid species or Evolutionary Significant Units (ESUs) in the project area that are listed as endangered or threatened. An EIS is necessary to consider the impact to these species and evaluate less harmful alternatives to the fill.

NEPA regulations also require the Corps to consider the cumulative impacts of the action. "Significance cannot be avoided by terming an action temporary." 40 C.F.R. § 1508.27. In sum, the cumulative effects of this project are significant and therefore require an EIS.

VII. ESA

Section 7(a)(2) of the ESA requires each federal agency to consult with NOAA Fisheries or U.S. Fish and Wildlife Service (collectively, "the Services") to ensure that any action authorized by such agency is not likely to jeopardize the continued existence of any

endangered or threatened species or result in the destruction or modification of critical habitat. 16 U.S.C. § 1536(a)(2).

Based on the JARPA executive summary provided by Intermountain Resources, this project underwent consultation in 1998. The Corps must reinitiate consultation on all threatened and endangered species. The new consultation should consider data available since 1998 and consider the degradation of species and ESUs since that time. In addition the consultation must consider species listed since 1998 (Lower Columbia River coho) and critical habitat listed since 1998 (bull trout, 12 ESUs of Columbia River Pacific salmon and steelhead and Snake River sockeye, spring/summer Chinook, and fall Chinook).

The 1998 consultation analyzed the impact on the peregrine falcon. Although the peregrine falcon has been removed from the ESA, it is still listed as “sensitive” by the State of Washington. Because the falcon nests in this region, the Corps and the Services should revisit the impact on the peregrine falcon.

VIII. The application does not contain sufficient information for the Corps to make an informed decision.

40 C.F.R. § 230.12(a)(3)(ii) requires a finding of noncompliance with restrictions on discharge when the application does not contain sufficient information. These comments indicate that the Corps does not have sufficient information on the practicable alternatives and the impacts on the proposed development.

IX. Public Hearing

Columbia Riverkeeper requests a public hearing on the permit application. Requests for a public hearing shall be granted unless the district engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing. 33 C.F.R. § 327.4(b). The valid interest that a public hearing will serve include addressing the following issues: practicable alternatives; impacts on a popular recreation area; scenic impacts; public safety concerns; and the impact on water resources, including listed salmonids.

In conclusion, Columbia Riverkeeper urges the Corps to deny the section 404 permit because the application does not comply with section 404 guidelines and the project is not in the public interest. If I may assist in any way, please give me a call.

Sincerely,

Brett VandenHeuvel

on behalf of:

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