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January 31, 2013

Montana Dep't of Environmental Quality
 and
 Montana Department of Natural Resources and Conservation
 Via Electronic Transmission: OtterCreekEIS@mt.gov

Subject: Environmental Impact Statement, Otter Creek Mine Permit Application

Dear Agency Co-leads:

Protect Whatcom is a grassroots organization located in Whatcom County, Washington. Our mission related to increasing public awareness of the impacts related to exporting Powder River Basin coal from proposed terminals on the west coast, including but not limited to the proposed Gateway Pacific Terminal. We recognize that the Montana Environmental Policy Act no longer allows your agencies to consider impacts of proposed activities in your state beyond your border, but because of the nexus between this proposal and regional impacts in the Pacific Northwest states, we offer this comment and thank you in advance for your consideration.

Need for a Programmatic EIS. A study conducted by the Bureau of Business and Economic Research (hereinafter, "the BBER Study") notes "the most significant indirect impact" of the proposed mine is the necessary expansion of the Tongue River Railroad (TRRR) to reach it.¹ We would argue semantically this is incorrect, and that the TRRR 89-mile expansion necessary to reach the mine is a direct impact. But the relevant issue is that these proposals are related and dependent on each other because neither would occur but for the other. For that reason, the Otter Creek Mine EIS should be jointly-conducted as part of a programmatic EIS (PEIS) with co-leads for the TRRR expansion, particularly the Surface Transportation Board and the U.S. Army Corps of Engineers. The Department of Natural Resources and Conservation is already a co-lead with the federal agencies on the TRRR EIS because condemnation, environmental impacts, etc., will occur on state trust lands. We believe a thorough analysis of the State's fiduciary responsibility to trust beneficiaries requires a comprehensive cumulative analysis of impacts of both proposals.

Arch Coal owns a one-third interest in the TRRR along with BNSF and Forrest Mars. Arch also owns an interest in the proposed Millennium Bulk Logistics Terminal in Longview, Washington.² BNSF's parent company, Berkshire Hathaway, invested heavily in Goldman Sachs, which subsequently invested heavily in Arch Coal. In short, the companies involved in all stages of activity related to the coal that would be mined in the Otter Creek Valley – the mining, rail transport, and export – are as interrelated as the activities themselves.

¹ Patrick M. Barkey and Paul E. Polzin, Bureau of Business and Economic Research (BBER). "The Impact of Otter Creek Coal Development on the Montana Economy," at May 7, 2012. Online January 29, 2013, at 8, <http://www.bber.umn.edu/pubs/econ/OtterCreekFinalReport.pdf> (hereinafter "BBER Study"). The Montana Contractor's Association contracted that study to measure economic "impacts" of the proposed Otter Creek Mine, though all impacts are framed as benefits.

² The BBER Study notes that while domestic demand for PRB coal is stable or declining, Asian demand is increasing, such that the most likely destination for coal from the proposed Otter Creek mine is existing and proposed terminals on the Pacific coast.. BBER Study at 8, 16 ("Domestic markets are unlikely to provide significant growth for Montana coal.").

Need for an Economic Impact Analysis. The BBER Study, purportedly of economic impacts of the proposed Otter Creek Mine, was effectively deconstructed by Power Consulting, Inc.³ and we incorporate those arguments by reference. Regardless of the geographic scope of the EIS under MEPA, cumulative direct and indirect impacts of the mine on the environment, human health, and the state's economy will be significant.

The BBER Study includes as an "impact" the jobs associated with necessary rail expansion of the TRRR without discussing property condemnation and impacts on rail communities associated with increased coal transport caused by the TRRR expansion. Further, they completely ignore the rail transport on BNSF lines beyond the TRRR expansion. Reasonably foreseeable future cumulative impacts on some communities in Montana may include coal trains from other mines bound for "existing and proposed" terminals on the west coast. Currently, five terminals are proposed in Washington and Oregon, with a combined export volume of 150 million metric tons per annum (mmta). (See Ex. 1 at the end of this comment.) Moving that quantity of coal would require nearly 50 trains per day, going and coming, *if* each train were 1.6 miles long. A full analysis of economic impacts on Montana would include but not be limited to an analysis of past, present, and reasonably foreseeable future rail impacts on communities including need for subsidization for expansion (e.g., addition of sidings or tracks) or upgrades of existing rail infrastructure, need for new tracks, traffic impacts at at-grade crossings and need for grade changes and/or quiet zones, etc.

Similarly, a comprehensive economic impact analysis would anticipate the probability Arch Coal will eventually opt to pay a fee in lieu of reclamation,⁴ leaving the full cost of reclamation to be borne by the state. That cost, in addition to costs associated with any necessary upgrades to filtration systems for drinking water supplies, environmental cleanup, etc., must be measured.

Health impacts associated with increased exposure to diesel particulates from increased coal train traffic equals health care costs borne by individuals directly or through their insurers; the public through taxpayer-supported programs such as Medicare and Medicaid; and health care providers which absorb some of the cost due to unpaid and unreimbursed billables.

The above examples are not comprehensive, but merely intended to be illustrative of the fact that all significant adverse impacts have associated costs which must be measured because it is only the net economic contribution of a proposed activity that is socially relevant in the permitting context.

The Public Trust Doctrine. The Montana Land Board granted a lease to Arch Coal to mine all of the coal at the Otter Creek Mine for export in spite of the fact that the mine is on school trust land and the state has a responsibility to manage the mineral assets in the best interest for current and future generations of Montana children. The economic impact analysis discussed above should determine how the state, as trustee, can maximize its stream of royalty revenue received for the benefit of the state's schools rather than simply allow the most easily-mined coal to be extracted today. Further, given that the coal would be mined for export to another country rather than for use in this country for energy generation, the state must consider the lack of

³ Thomas Michael Power and Donovan S. Power. "The 'Economics' of the Proposed Otter Creek Coal Mine: A Critique of One-Sided Economic Analysis," prepared for the National Wildlife Federation, Montana Environmental Information Center, and Sierra Club, January 2013.

⁴ See generally Epstein, Harris, Johanna Wald and John Smillie. "Undermined Promise: Reclamation and Enforcement of the Surface Mining Control and Reclamation Act 1997-2007," 2007. Joint Publication of the Natural Resource Defense Council and Western Organization of Resource Councils. Online January 29, 2013, at <http://www.worc.org/userfiles/file/SMCRA%20Report.pdf>.

benefit to trust beneficiaries and state residents of “keeping the coal in the ground” until it would be mined for domestic consumption.

Mitigation. Reclamation after abandonment of surface mines is controversial because while the legal requirements are clear on paper, enforcement is virtually nonexistent.⁵ This has huge implications for water security because absent reclamation, precipitation captures particles when it falls on exposed surface mine sites long after they're abandoned, carrying the elements in coal – mercury, lead, selenium, uranium, cadmium, etc. – to downstream water sources and soils. At that point, the public incurs the expense of increased water filtration for drinking water sources, but the environmental consequences and impacts on plants and animal life may not be capable of mitigation. Because the Otter Creek mine is on lands held in trust for the state's children's educational future, the tradeoff for immediate income to the state should not be the quality of their drinking water and environment in the future. One possible mitigation to prevent this would be to permit mining in stages and limit the volume to be removed to specific geographic sites in each stage, requiring completion of reclamation of a stage of mining before the next stage may begin. Absent such a mitigation, what may well occur – as currently occurs elsewhere throughout the region – is the proponent eventually paying a fee in lieu of reclamation because it is so much cheaper, leaving the real cost of reclamation to be borne by the state. That, of course, negates any current economic benefit to the state of leasing the land for mining in the first place, and is a violation of the state's fiduciary responsibility to the beneficiaries of those trust lands.

Reasonable Alternatives. The BBER Study suggests an alternatives analysis should consider two things only: the economic contribution of granting the permit (and Power Consulting, Inc. questions the numbers used by BBER) and the lack of contribution that results from not granting the permit. First, as argued above, BBER completely ignores economic costs associated with significant adverse impacts of mining and related impacts, most notably rail transport. It is highly likely that it economically benefits Montana to deny the permits when all costs are calculated. Second, BBER ignores reasonable alternatives such as using the land to generate wind energy. Regardless of the legal implications of the lease Arch obtained from the state, the current EIS relates to the permit to mine coal and that EIS should consider as a reasonable alternative the social benefit derived from some other activity on that land other than mining coal, particularly when there are so many alternative sites in the state from which coal can be mined that do not require a new rail line.

Thank you in advance for your attention. Please feel free to contact me should you have any questions at (360) 656-6180.

Sincerely,

Protect Whatcom

By: Terry J. Wechsler, Co-founder

Cc: Surface Transportation Board (EIS Lead, Tongue River Railroad, reference: STB Docket No. FD-30186)
Via electronic transmission: blodgettk@stb.dot.gov
and
President's Council on Environmental Quality
Via electronic transmission: FN-CEQ-OpenGov@ceq.eop.gov

⁵ See, e.g., *id.*

Exhibit 1 – Tables 1 and 2, Proposed West Coast Coal Terminals

Table 1 Proposed Coal Terminals on the Columbia River (2012 Commercial Vessel Port Calls Approx. 1340) ⁶				
Terminal Name	Millenium Bulk Logistics	Port Westward Morrow Pacific Project	Port Westward Project	Subtotals
Proponent	Millenium Bulk Terminals, LLC (Subsidiary of Ambre Energy & Arch Coal)	Coyote Island Terminals, LLC (Subsidiary of Ambre Energy); Pacific Transloading (Ambre subsid., barge dock)	Kinder Morgan Energy Partners	
Location	Longview, WA, On Columbia R.	Boardman, OR, Columbia R., barges to Port of St. Helens	Port of St. Helens, OR, Port Westward Indus.Pk.	
Coal Pile	Not discussed in JARPA	3 storage barns	Unknown	
Coal Vol.	44 mmta	8 mmta	30 mmta	82 mmta
Other Vol.	n.a.	n.a.	n.a.	
Mining Co.	Arch, Ambre (Cloud Peak sold its int. in Decker mine to Ambre)	Unknown	Unknown	
Rail/Day (going/coming)	14.5 Not discussed in JARPA ²	2.6	9.9	27 min. ⁷ Going/coming
Rail Expansion Plans	Unknown	Unknown	\$50 mil. for sidings At terminal	
Pier	2202', Columbia R. (Existing pier 670')			
Vessels/ Year (one way)	850 Panamax ⁸ Bulklers ⁹ Not discussed in JARPA	156 Panamax Bulklers 624 barge tows ¹⁰	590 (est.) Panamax Bulklers ³	1596 ³ One way
Permits Required	USACE, WA ECOL, Cowlitz Cty.	USACE, OR Dep't Environmental Quality, OR Dep't St. Lands	USACE, OR Dep't Environmental Quality	
POCs	Mike Wojtowicz, Cowlitz Cty Dep't Bldg & Planning, Kelso, (360) 577-3052 x 6671, wojtowiczm@co.cowlitz.wa.us	Steve Gagnon, Project Mgr, USACE (503) 808-4379, steven.k.gagnon@usace.army.mil		
Examples: at-grade crossings	422/423 intersection, base of Lewis&Clark Br., Longview, at-grade. St. Johns Hosp. cut off	Ranier	Ranier	
Status	RFP closes 1/15/13	Dep't St. Lands cmts closed; OR DEQ; USACE (conducting EA; pending decision re EIS in 6 mos.-1yr.)	"Due diligence" stage; Seeking site after PGE refused to lease	
Website	www.co.cowlitz.wa.us/buildplan/WhatsNew/MBTL.htm	www.nwp.usace.army.mil/Missions/Currentprojects/CoyoteIslandTerminal.aspx		
Proponent Website	millenniumbulk.com/	morrowpacific.com/	portwestwardproject.com	

Prepared by Protect Whatcom. Revised 12/26/12.

Table 2 All Proposed Coal Terminals, Oregon and Washington	
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⁶ Source: Columbia River Bar Pilots.

⁷ Rate applied: .33 trains/1 mmta *if* all trains are 1.6 miles long.

⁸ Maximum allowable draft for Panamax bulkers, due to constraints in the Panama Canal, is 39.5'. Maximum depth dredged in the Columbia River is 43'.

⁹ Extrapolating from numbers provided for the Port of Morrow Project, which is 19.5 bulkers/1 mmta coal volume.

¹⁰ http://www.oregonlive.com/environment/index.ssf/2012/08/will_coal_barges_clog_the_colu.html.

Terminal Name	Gateway Pacific	Port of Coos Bay "Project Mainstay"	Columbia River Subtotals (See Table 1)	Totals
Proponent	Pacific Int'l Term. (Subsidiary, SSA Marine; Goldman Sachs 49% owner)	Port in Partnership with Mitsui & Co. (USA) and Metro Ports (Subsidiary, Nautilus Int'l Holding Corp.)		
Location	Cherry Pt., WA	Coos Bay, OR		
Coal Pile	80 ac. X 60' H, Uncovered			
Coal Vol.	48 mmta	11 mmta	82 mmta	141 mmta
Other Vol.	6 mmta other ¹¹			
Mining Co.	Peabody			
Rail/Day (going/coming)	16 BNSF	3.6 Coos Bay Rail Link + Main Line	27	47 min. ¹² Going and coming
Rail Expansion Plans	Not discuss in JARPA applications beyond the Custer Spur			
Pier	2980', Salish Sea			
Vessels/ Year (one way)	318 Panamax, 169 Cape Class Bulkers	100	1596	2183 One way
Permits Required	USACE, ECOL, Cty.			
POCs	Randel Perry, USACE, 360-734-3119 Tyler Schroeder, WCPDS, 360-676-6907	David Koch, Port CEO, dkoch@portofcoosbay.com Elise Hamner, Port Rep., (541) 267-7678		
Examples: at-grade crossings	Mt. Vernon,			
Status	Comments for DEIS closes 1/21/13	Extension to 3/13 of exclusive negotiating agreement with Port.		
Website	www.co.whatcom.wa.us/ pds/plan/current/gpt-ssa/			
Proponent Website	gatewaypacificterminal.com/	www.portofcoosbay.com/index.ht ml		

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¹¹ Stage 2, after 10 years, if market conditions warrant, at second terminal. Initially, calcined coke, a by product of BP Cherry Point operations., and Canadian potash. Other commodities later could include wheat, wood chips, and sulfur.

¹² If any trains are less than 1.6 miles long, this number will be higher.