



Cowlitz Indian Tribe

November 29, 2016

Office of the Assistant Secretary – Indian Affairs
Attn: Office of Regulatory Affairs & Collaborative Action
1849 C Street, NW, MS 3071
Washington, DC 20240

To:

Lawrence Roberts
Principal Deputy Assistant
Secretary – Indian Affairs

Tracy Toulou
Director
Office of Tribal Justice

Jo-Ellen Darcy
Assistant Secretary
of the Army (Civil Works)

Dear Lawrence, Tracy, and Jo-Ellen,

I write on behalf of the Cowlitz Indian Tribe located in southwest Washington State. Our historic area includes a large portion of the Lower Columbia River Basin that spans on both sides of the Columbia River and into Oregon State. We write to you in regards to contribute input associated with Federal Decision making on infrastructure projects. Past impacts associated with Federal Decision making on infrastructure projects has had a profound negative impact to our community, our environment, and our culture. It has threatened our existence upon within our own homelands. The largest impact was at the very beginning when Federal Authorities unjustly stole our lands when we refused to sign a draft Treaty in the 1850s. Subsequently, decisions continued to be made to further diminish our culture, our way of life, and our natural surroundings. Although great strides have been accomplished in regards to receiving justice for historic wrongs, we continue to be threatened by the Federal decision makers today and in the future. These threats are evident in numerous areas within the Federal Bureaucratic system.

The Cowlitz Indian Tribe is currently dealing with three new major proposed fossil fuel developments within our homeland of the lower Columbia River Estuary. This environment is critical to the life-history and survival of numerous salmon, steelhead, and smelt populations that are currently listed under the Endangered Species Act. The potential deleterious impacts of these proposed developments would significantly impact Trust or Treaty Trust resources to all tribes within the Columbia Basin, the general public, and the outlook of environmental recovery in the region. The Columbia Basin is already significantly deleteriously impacted by already existing industry, agricultural activities, municipalities, and hydro-developments. If these proposed developments are permitted, it would continue to undermine current restoration efforts and court orders associated with other deleterious impacts to trust resources within the entire Columbia River Basin. This also includes resources that Canada has an interest in. These proposed developments also carry impacts that would limit flexibility with pending negotiations with the US and Canada regarding the movement to modernize the Columbia River Treaty to include ecosystem functions as a key purpose under the Treaty.

The Federal Government is involved primarily through the US Army Corps of Engineers on the following three proposed developments that we have been significantly burdened with:

1. Proposed Tesoro-Savage Oil Terminal in Vancouver, WA.
2. Proposed NW Innovations Inc. Methanol Plant in Kalama, WA.
3. Proposed Millennium Bulk Terminals Inc. Coal Terminal in Longview, WA.

The Cowlitz Tribe is concerned with the Federal Permitting and/or NEPA processes and associated consultation in regards to these proposed developments:

These large complex projects are being proposed along the Columbia River and nearby communities. It is difficult to effectively consult on, or review, these projects due to the rapid succession of new projects being proposed, scoped, and reviewed. Our capacities are being strained in regards to dealing with these projects all closely timed with one another. There are cases where notifications are intermixed with many other less relevant notifications, which adds to the dilemma of receiving proper notifications within a timely manner.

- A. The Cowlitz Tribe is troubled in regards to the position that action agencies take in regards to non-responses. Their take is that a no response means that we have no concerns associated with what is being proposed. The fact is that we in many cases have concerns and interests but that the draft permits or other proposed action documents aren't being reviewed due to capacity concerns and exacerbated by the sheer volume of draft permits, etc. we are forced to try and handle with little to no funding.
- B. The prepared documents presented are highly limited in scope (example: do not fully evaluate inter-dependent activities associated with proposed actions or do not fully evaluate all potential effects of a proposed action), leading to inaccurate and incomplete project evaluations. The larger picture, beyond the immediate project area, should always be part of any evaluation associated with major proposed developments. The limited scope inappropriately biases project review towards project proponents.
- C. Project proposals or draft NEPA documents often lack specific assessments that are necessary to review project impacts. The reports may not have important impact assessments and in many cases make statements that assessments 'will be completed' in the future, however it does not note when or with what other permitting process this will be completed.
- D. Meaningful biological opinions are being undermined by the limited Area of Potential Effect (APE) scopes. Narrow scopes insinuate that fewer individual fish or animals are impacted by a proposed project. Additionally, viewing individual species separately from one another undermines the ecosystem approach. Functional, healthy ecosystems are crucial to functional, healthy rivers and reducing parts to pieces rather than parts to whole, does not adequately represent the approach that must be adopted in order to slow or stop habitat degradation.
- E. The Army Corps solicited comments in July 2015 in regards to ascertaining to what degree of scoping and analysis it would do in regards to the proposed Tesoro-Savage Oil Terminal in Vancouver, WA. Nothing has been heard from the Army Corps since, regarding the next step in public process.
- F. The Cowlitz Indian Tribe has been told that the proposed Kalama Methanol plant's EA is being completed solely for the USACE to aid in their decision making process and will not be made publically available.
- G. There is some question for the Cowlitz Tribe if consultation with the local USACE branch is actually government-to-government. We are suspect that the scoping and subsequent analysis under NEPA is being directed to Districts from Headquarters. There is considerable concern that consultation with District Commanders is highly diminished due to influences and direction from Headquarters.

- H. The Cowlitz Tribe is concerned that District Commanders may not be fully committed and engaged with the issue of government-to-government consultation with tribes. We recently had a date set for consultation regarding the proposed Kalama millennium coal terminal section 106 permitting. It was difficult to schedule a meeting within a timely time-frame to begin with, and now it has been postponed for another near two months from the original date set. Our request for consultation was made in early September 2016 and now is scheduled for December 2016. We believe that this wait is way too long and that if consultation was a priority item, our meeting would likely have already have taken place.

The previous nine items represent just a quick snapshot of the dilemma we face in regards to the continued injustice and threats we face in regards to Federal Authorities which are obviously biased in regards to serving economic interests at the demise of the first peoples upon the landscape, with continued threats to our culture.

We have been and continue to complete significant activities in regards to addressing and implementing restoration activities of our traditional first foods within our homeland. Several of our significant cultural resources continue to be listed under the Endangered Species Act (ESA). Significant areas of our work towards restoration are within the footprint of potential impacts associated with the three major fossil fuel proposals within the Lower Columbia River Region. There are numerous other entities in the potential impact area that have invested considerable resources regarding restoration within the Columbia River system. A considerable amount of resources have been invested from Federal and State tax dollars, as well as "rate payer" dollars from utilities in the region. There are significant restoration plans that have been and will be implemented in the region in the foreseeable future. We and many others maintain the goal of restoring habitat and other conditions for natural resources within the Columbia Basin. Much of this work is due to habitat loss, poor water quality, and other factors of which industrial developments have been a significant contributor to and that Federal Authorities have allowed to happen.

It is troublesome that we have Federal authorities that have invested millions to try and repair damage from the past on one hand, and on the other, are promoting the threat of future damage to investments already implemented in the region with these three major fossil fuel proposals within a highly sensitive environment.

"Federal Authorities need to do a better job in regards to recognizing historic damage, and current restoration efforts from that damage when conducting permitting processes for future proposed actions."

The Cowlitz Indian Tribe offers the following recommendations in regards to trying to improve the outlook associated with Federal Decision making on infrastructure projects:

- 1) **Re-affirm to Federal Authorities that tribes are not public entities or stakeholders.** We are Government entities firmly established through Treaties or Inherent rights to existence upon this landscape and to allow for us to govern our people and resources without deleterious infringement from outside entities.
- 2) **Amend Executive Order 13,007 to require the United States to obtain the informed consent of affected Tribal Nations prior to any Federal undertaking that potentially impacts Indian sacred sites or trust resources, as required by treaties, inherent rights, and customary international law. For consent to be informed, sovereign tribal nations must be given free access to information. Laws such as FOIA must not be used as obstacles for informed consent.**

- 3) **Cause the Army Corps of Engineers to prepare a Pacific Northwest region wide Environmental Impact Statement (EIS) for all fossil fuel development projects in our region.**
- 4) **Develop a new executive order that makes it a responsibility for Federal Authorities involved in infrastructure permitting to recognize and take into account broader interdependent activities and their potential impacts associated with a proposed action.** In our example for the proposed coal terminal in Longview, WA; their draft Environmental Impact Statement was conducted with a very narrow geographic scope that does not recognize interdependent activities and addresses only a very small geographic area of potential impacts. This is totally unjust and serves to show that the Army Corps is bias within their decision making authorities.
- 5) **Re-District the Seattle and Portland Army Corps Districts so that there is only one federal permitting authority from the Army Corps associated with the Lower Columbia River Region and/or Estuary.** Our tribe finds it very difficult to communicate with two Corps districts that are operating within our area.
- 6) **Change the pattern of rotation of Army Corps District Commanders so there is more stability and longevity in District Leadership.** The Cowlitz Tribe is tired of dealing with a new District Commander every couple of years, which has been a fairly consistent practice the Corps has in regards to their continuous rotation of leadership in and out of District Commands. Once we develop a good working relationship with a Commander, then they leave for a new post.
- 7) **Halt all permitting activities associated with major infrastructure developments within the Lower Columbia River until Federal Authorities recognize and integrate within their decision framework the regional recommendation as it pertains to the Columbia River Treaty between the United States and Canada. To also consider potential impacts that Federal permitting may have on pending renegotiation of this Treaty with Canada.**
- 8) **Reform Army Corps' interpretation of National Environmental Policy Act regulations to require that all NEPA prepared documents such as draft Environmental Assessments is open for public comment and input. More specifically, to reform CEQ NEPA Regulations, 40 C.F.R. § 1501.4(e)(2) to allow for better communications and input from tribes and the general public.** We believe that Federal Authorities should have less discretion on public involvement. We also believe reform should also re-affirm and recognize tribes legal standing and better recognize/incorporate meaningful tribal input in the NEPA process (such as providing actual draft documents for us to review) and allow our input prior to decisions being made based on these documents.

We have relied on the once bountiful resources in the region since time immemorial for survival. Our Tribe continues to depend on the precious resources (many of which are in a depressed state) in the region, which carry high significance to our way of life. Our Tribe carries natural resource management authorities, rights, and obligations within the Columbia Basin that continue to be impacted by Federal authorities. Since before and after Federal Acknowledgement, we have taken the "high road" in regards to being a good neighbor, establishing positive relations with numerous Federal, State, Tribal, and Local entities. We have numerous activities that are ongoing in the region in regards to addressing concerns associated with the depleted status of our first foods and working on recovery of such significant cultural resources. We continue to hope that Federal leadership will repeal some damaging policies associated with federal permitting on infrastructure projects, and to pave a new path which recognizes, and provides tribes with greater leverage of instilling greater ethical values associated with future proposed actions from Federal authorities. Ethical values that recognizes existing conditions more holistically and takes

that into greater account than any proposed action that serves to bring new threats of displacement to any particular region.

We thank you for the opportunity to express our concerns associated with the make-up and decision making processes associated with Federal authorities activities on infrastructure permitting activities. Please contact myself or have appropriate staff contact our Natural Resources Director, Taylor Aalvik at: 360-577-8140 or taylor.a@cowlitz.org; or our Tribe's Executive Assistant, Abriel Johnny at: ajohnny@cowlitz.org and/or our Natural resources Program Assistant, Tiffini Alexander at: talexander@cowlitz.org for any follow up communications. They both can also be contacted by calling 360-577-8140. We look forward to follow up communications,

Sincerely,



William Iyall
Cowlitz Tribal Chairman

Cc: Stanley Speaks, NW Region BIA Director
USACE NW Division Brigadier General Scott A. Spellmon
USACE Portland District Commander, Colonel Jose L. Aguilar
USACE Seattle District Commander, Colonel John G. Buck