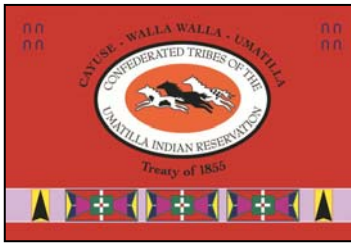


Confederated Tribes *of the*
Umatilla Indian Reservation

Department of Natural Resources
Administration



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July 27, 2017

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Olympia, WA 98504-7600
[http://millennium.wqc@ecy.wa.gov](mailto:millennium.wqc@ecy.wa.gov)
<http://www.millenniumbulkeiswa.gov/submit-comments.html>

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Filed electronically: <http://ws.ecology.commentinput.com/?id=4EcBA>

RE: Millennium Bulk Coal Terminal Clean Water Act §401 Certification

Dear Director Bellon, Ms. Toteff, and others:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to provide additional comments on the draft Clean Water Act §401 Certification for the proposed Millennium Bulk Coal Terminal. The CTUIR DNR believes that the Certification does not adequately provide the necessary assurances that the project will comply with the Clean Water Act. We believe that there are no actions or measures that the project, as currently proposed and planned, can undertake that will assure that water quality standards will be met and compliance with the Clean Water Act will be achieved. We request that you deny issuance of a §401 Certification for the Millennium Bulk Terminal.

Millennium’s Final Environmental Impact Statement (FEIS) identified the many impacts on water quality from project construction and operations. They include coal dust discharges from uncovered coal piles and mile-and-a-half long coal trains and others that would cumulatively harm designated beneficial uses¹ and violate the State’s narrative and numeric water quality standards and Antidegradation Policy. The CTUIR DNR maintains that coal dust deposition—both at the site and along the transport corridor, on land and in water—will be a significant and serious threat and one which cannot be mitigated.² The FEIS found “unavoidable and significant adverse environmental impacts” for nine environmental resource areas.³ While the applicant has proposed various modifications and mitigation, they remain insufficient to remedy the deficiencies in the project or achieve ultimate compliance with law and regulations. Water and terrestrial resources in the areas that would be affected by the project already suffer from environmental damage and impairments from other sources; a new, additional one should not be allowed. Finally, the project would infringe on tribal Treaty Rights—specifically, the right of taking fish—by threatening the health and integrity of the fish themselves (the basis of the right), the health of the waters that support the fish, and the ability of tribal members to take fish (to exercise the right).⁴

Tribal members access the Columbia River to exercise Treaty Rights up and down the river. At one site in particular, along the Columbia River between Bonneville Dam and the Bridge of the Gods at Cascade Locks, are numerous tribal fishing scaffolds. Satellite images from Google Earth show the proximity of fishing scaffolds to the railroad tracks; see images below:



¹ These uses for the Columbia River in this area, a portion of the critical estuary, include spawning and rearing habitat for salmon, recreation, water supply for domestic, industrial, and agricultural uses, wildlife habitat, fish harvesting, and potentially others.

² See also comments of U.S. Fish and Wildlife Service on Draft Environmental Impact Statement.

³ These include social and community resources, cultural resources, tribal resources, rail transportation, rail safety, vehicle transportation, vessel transportation, noise and vibration, and air quality. While some of these might possibly be amenable to mitigation, most measures would likely be unreasonable or incapable of being accomplished; others would be impossible to mitigate.

⁴ The FEIS states that the project would interfere with tribal fish harvest, constituting a significant adverse impact (FEIS 3.5-20).



Many of these scaffolds are between 50 and 100 feet from the BNSF railroad line. CTUIR members and members of other tribes access the river at marked and unmarked crossings all along the river to exercise Treaty Rights. The additional rail traffic impacting tribal member access coupled with the uncontained emissions of coal dust in immediate proximity to fishing locations will have a significant, direct impact on the exercise of constitutionally protected Treaty Rights of the CTUIR.

The Millennium Bulk Coal Terminal would not comply with Washington’s Antidegradation Policy (WAC 173-201A-300) and would not result in a positive outcome in a “necessary and overriding public interest determination” (WAC 173-201A-320(4)). Costs to the State, its citizens, its environment, tribes and tribal rights, and many others would far outweigh any benefits that might accrue—which mostly would be to a relative few and often distant, non-local interests. There is no “necessary and overriding public interest” in constructing and operating the coal terminal.

The Washington Department of Ecology should also take into consideration the Washington Department of Natural Resources’ decision to deny Millennium’s request to sublease state-owned aquatic lands. It should also factor in climate change effects and impacts, and, in doing so, would further lead to the inevitable conclusion that the project should not proceed. In addition to its authority under the Clean Water Act, Ecology should also exercise its authority—and its responsibility—under the State Environmental Policy Act (SEPA) and disapprove the project.

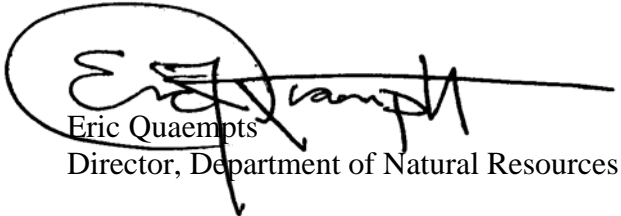
As we stated previously, the CTUIR’s Treaty Rights are threatened by the unprecedented level of fossil fuel shipment and distribution that has escalated in recent years. Additional projects such as the Millennium Bulk Coal Terminal increase those threats and exacerbate those risks. More rail traffic will result in additional air pollution from dust and train exhaust, greater risk of derailments and spills, and magnified dangers to tribal members accessing fishing sites along the river. End-use of the product (burning the coal) will aggravate climate change, the effects of

which are already being felt and are already impacting tribal First Foods. We ask that you help us confront these many challenges and not add to them, and deny the §401 Certification for the Millennium Terminal.

Previously, the CTUIR DNR provided comments on the §401 Certification on November 29, 2016. These comments are intended to supplement and not replace those comments and our November 2016 comments are incorporated by reference.

The CTUIR DNR thanks you for your consideration of our comments. If you have any questions, please contact Audie Huber, Inter-Governmental Affairs Coordinator, at (541) 429-7228.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Quaempts", is written over a printed name and title. The signature is stylized and somewhat illegible. The printed text below the signature reads "Eric Quaempts" and "Director, Department of Natural Resources".

Eric Quaempts
Director, Department of Natural Resources