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SUBJECT: Comment to Washington Dept. of Ecology on the KMMEF

Comment by Mark Uhart, Kalama, WA

Although these comments are not directly related to the SSEIS, they are provided with respect to the overall analysis of the KMMEF project by Ecology, codified in the KMMEF EIS and FSEIS. The methanol manufacturing facility, export facility, and lateral pipeline are inextricably linked and the project cannot go forward without the pipeline. These comments concern the potential use of eminent domain by any governing entity to acquire the necessary lands, and or rights-of-way, for use by Williams-NW Pipeline LLC for the purpose of constructing a natural gas pipeline for private use. The natural gas will be used solely by a private entity, Northwest Innovation Works (NWIW), for the production of methanol to be exported for use by a foreign government.

The question of seizing private land owners' property by eminent domain, for the purpose of building the lateral natural gas pipeline to support the KMMEF, may not meet Washington constitutional law, and supported by Washington case law. Construction and operation of the proposed pipeline will affect numerous property owners along the route, to include Cowlitz County Cemetery District #6 and homeowners. I believe the seizing of private property for private gain is not consistent with the Washington State Constitution:

"SECTION 16 EMINENT DOMAIN. *Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: Provided, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use. [**AMENDMENT 9,** 1919 p 385 Section 1. Approved November, 1920.]"*

The question is, is the natural gas pipeline, the gas delivered to the KMMEF by the proposed Kalama Lateral Project, for "public" or "private" use? Washington case law indicates it may be interpreted as being for use by a private entity, for private gain.

In the 1903 decision "*Healy Lumber Co. v. Morris*, *33 Wash. 490, 74 P. 681*," Justice Dunbar, who was a member of the Constitutional convention committee of 1889,

expanded and proposed the final version of Section 16. He offered crucial guidance on the distinction between "public" and "private" uses in one of the first opinions interpreting the provision: *Healy Lumber Co. v. Morris*, 33 Wash. 490, 74 P. 681 (1903).

> *"From a consideration of all the authorities, and from our own views on construction, we are of the opinion that the use under consideration must be either a use by the public, or by some agency which is quasi public, and not simply a use which may incidentally or indirectly promote the public interest or general prosperity of the state. Id. at 509 (emphasis added). In the Healy Lumber Co. v. Morris decision, the Court concluded that the company's proposed logging roads, which would not actually be used by the public, could not qualify as a public use under this test—despite the gravity of their public benefit. Id. at 511."*

Likewise, the KMMEF lateral pipeline will not actually be used by the public, or directly benefit the public. The project's economic development assertion, being it of public benefit, portents the use is for a greater (community) good. Section 16 forbids such private use, regardless of how desirable it might be, *Hogue v. Port of Seattle 54 Wn.2d 799, 838, 341 P.2d 171 (1959).* In the Brief of Amicus Curiae Institute For Justice, Supreme Court No. 95813-1[1], the Court further states, "Then, in *Petition of Seattle*, the Court (citing *Hogue*) rejected the City of Seattle's attempt to take private land and lease it to private shops and entrepreneurs to (again) promote economic development, reasoning: "It may be conceded that the [project] is in 'the public interest.' However, the fact that the public interest may require it is insufficient if the use is not really public. A beneficial use is not necessarily a public use. *Hogue v. Port of Seattle 96 Wn.2d 616, 627, 638 P.2d 549 (1981.)"*

In fact, the GHG emissions from the consumption of the natural gas delivered by the pipeline will be detrimental to Ecology's goal to reduce greenhouse gas emissions to protect Washington's economy and environment from the effects of climate change. Therefore, the application of eminent domain to seize private property for another entity's private use is not in the public's best interest. The negative economic impact of not achieving State GHG emission reductions may exceed the asserted local economic benefit. "In this State it is settled that public use means "public usefulness, utility or advantage, or what is productive of general benefit; so that any appropriating of private property by the State under its right of eminent domain for purposes of great advantage to the community, is a taking for public use.[2]" This author asserts that the KMMEF provides a greater utility and advantage to a foreign government than to Cowlitz County.

Ecology, and the State of Washington, should follow the law and deny this project.

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[1] Supreme Court of the State of Washington, CHONG and MARILYN YIM, KELLY LYLES, BETH BYLUND, CAN APARTMENTS, LLC, AND EILEEN, LLC, *Respondents*, v. CITY OF SEATTLE *Appellant*.

[2] *Olmstead v. Camp,* 33 Conn. 532, 546; *Todd v. Austin,* 34 Conn. 78.