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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
* 11404 Moorage Way * La Conner, Washington 98257 *

December 18, 2024

Shannon Pressler
WA Department of Commerce
1011 Plum Street SE
P.O. Box 42525
Olympia, WA 98504-2525

Re: Refinery Impacts to Swinomish Indian Tribal Community

Dear Ms. Pressler:

The Swinomish Indian Tribal Community (“Swinomish” or “the Tribe”) appreciates the opportunity to provide input for the Washington Refinery Study conducted by the Department of Commerce and Western Washington University. Swinomish is heavily impacted by the existence and operation of multiple refineries on lands surrounding the Salish Sea and we believe this study is an excellent opportunity to take a hard look at the complex and nuanced impacts, both beneficial and detrimental, direct and indirect, of the refineries on Swinomish.

Historical Context

The Swinomish Tribe is a present day successor in interest to the tribes and bands that signed the 1855 Treaty of Point Elliott ("Treaty") with the United States, which established the Swinomish Reservation. Approximately one hundred years later, two refineries were constructed on March Point, within Swinomish's Treaty-reserved homeland. The refineries, which have subsequently had a number of owners and operators, are now owned and operated by Marathon Petroleum Corporation and by HF Sinclair Corporation.

These refineries were built in an era and world that is vastly different from today. The Federal government's policy at the time was to terminate the existence of Federally-recognized Tribes and to dismantle their sovereignty, self-governance, community, culture and land base. Federal environmental protection at the time was limited, predating the Clean Water Act and other bedrock environmental statutes.

On the state level, the State of Washington persisted in refusing to recognize that Federal treaties with Indian Tribes were and remained the supreme law of the land. It was not until decades after the refineries were built that Judge Boldt reaffirmed the continuing vitality of the treaties, including the Treaty of Point Elliott. *United States v. Washington*, 459 F. Supp. 1020, 1049 (1975). It was then more than a decade after that when the State formally acknowledged its government-to-government relationship with Washington Tribes in the Centennial Accord.

In this context of formal Federal and State policies explicitly hostile to Washington Tribes, it is no surprise that the refineries on the Salish Sea were not the product of consultation, let alone collaboration, with the affected tribes by their Federal trustee, State and local governments, or the businesses that conceived of and built the refineries. As a result, despite the explicit recognition of the Swinomish Reservation in the 1855 Treaty, despite the proximity of the refineries to the Swinomish Village and to traditional Swinomish fishing grounds, and despite the scale and foreseeable impacts of the refineries and of accompanying industrial activities, the refineries were not the product of consultation or Tribal consent.

Nonetheless, in subsequent years Swinomish has adapted as much as possible to the presence of the refineries and their accompanying industrial infrastructure. Swinomish also recognizes that there are, as discussed below, benefits brought by the refineries, their employees and contractors. However, the benefits do not alter the fact that Swinomish did not have a role in determining whether these large-scale industrial facilities would be located in its homeland and adjacent to its waters. In this, the ongoing presence of the industrial facilities stands as a stark reminder of the lack of respect and concern for Tribal homelands, Treaty resources and Tribal sovereignty and self-determination at the time of the refineries' construction.

However, past wrongs need not be perpetuated. The March Point refineries have new operators, and this presents an opportunity to demonstrate respect for the Tribe's sovereignty, self-determination, homeland and Treaty rights and resources. Indeed, the operators of the March Point refineries initiated outreach to Swinomish when they recently acquired their facilities, and have continued active communications with Swinomish in the years since. From these beginnings there is an opportunity for increasing respect and trust, as well as cooperation to increase the beneficial impacts of the refineries, reduce their detrimental impacts, and address concerns, challenges and opportunities shared by Swinomish and the neighboring refineries.

Beneficial Refinery Impacts

Swinomish operates a number of economic enterprises in the vicinity of the two March Point refineries operated by Marathon and HF Sinclair. The refineries have direct and indirect positive economic impacts for Swinomish. At the highest and broadest level, the refineries generate income streams that are disbursed throughout the local and regional economy, providing

financial resources that may then find their way, directly or indirectly, to support Swinomish businesses.

Refinery employees and contractors, their families, and friends are important customers and guests at three Swinomish markets and gas stations, as well as the Swinomish Casino & Lodge, Swinomish Golf Links, and Swinomish retail tobacco and coffee shops. Swinomish Shellfish Company oysters are sold at Swinomish markets and at a pop-up bar adjacent to the Swinomish market closest to the refineries. Refinery employees, contractors and families also are among potential customers at seasonal fireworks retailers operated by individual Swinomish Tribal members and their families on Tribal land not far from the refineries, further diversifying the Swinomish economy.

The refineries' economic impacts at Swinomish increase seasonally in a predictable and financially important cycle. During "turnaround" work on a refinery, contractors and their employees live and work in the local area for an extended period of time, and Swinomish businesses observe increased customers and a positive financial impact while the turnaround contractors and employees are present. Year round, business visitors to the refineries and their local contractors also may stay overnight at the Swinomish Lodge.

The refineries themselves generate business, directly and indirectly, for the Swinomish Casino and Golf Links. Direct economic impacts arise from refinery banquets at the Swinomish Lodge and refinery use of Swinomish catering services. Indirect economic impacts generated by refinery employees or business visitors include enjoying lunch at the Casino, playing golf after work, in a league or by hosting outings at Swinomish Golf Links.

Over the decades, the refineries and their contractors have provided employment opportunities to Swinomish Tribal members. Some of this work is year-round, and some is seasonal employment for turnaround contractors. Such locally-available employment paying competitive wages brings important financial resources to Swinomish families and helps to further diversify the Swinomish economy.

The proximity of a local refinery supplier to the Swinomish fuel markets can reduce greenhouse gas and other emissions from transporting refined product to the markets for retail sale to customers, and may as well reduce financial costs incurred in transporting fuel for sale.

The resulting financial benefits from these relationships to Swinomish economic enterprises are particularly important because the enterprises' financial return to the Tribe helps support essential Swinomish governmental services to the Reservation, such as law enforcement, environmental protection and land management. The enterprises also support important Swinomish governmental programs that have been developed to help address disparities in areas

such as health and education that disproportionately affect Swinomish and other indigenous communities. Given limitations on tribal tax jurisdiction, the role played by Swinomish enterprises in supporting Swinomish self-government is critical.

In addition to these business relationships, refinery sponsorship of the Swinomish Boys & Girls Club's annual golf tournaments helps support services to youth in the Swinomish Village. In the absence of the March Point refineries, Swinomish enterprises and the governmental services and programs they support would not enjoy their current level of operations.

Detrimental Refinery Impacts

There are inevitably costs and risks that accompany the benefits and successes that are supported by the local refineries. Like the benefits outlined above, the costs and risks are complex and nuanced, direct and indirect, obvious and subtle. These detrimental impacts are not abstract but intensely local – refineries are located within the Swinomish Treaty Reservation and homeland. The impacts are and will be enduring – Swinomish members have lived in this area since time immemorial and expect to continue to do so for many, many generations into the future.

One of the core rights recognized and guaranteed by the Treaty is the Tribe's right to fish in the Tribe's adjudicated Usual and Accustomed fishing areas in and around the Salish Sea. *United States v. Washington*, 459 F. Supp. 1020, 1049 (1975). Those Usual and Accustomed fishing areas are not only adjacent to the March Point refineries but encompass four of the five refineries in the state. Any oil spill or other incident at or adjacent to any one of those facilities, or during the conveyance of crude oil or refined product to or from any of those facilities, could have potentially devastating impacts on the ability of members of the Swinomish community to exercise the Tribe's Treaty reserved right to fish.

Additionally, the two refineries located on March Point pose ongoing risks to the Reservation and the Swinomish community. Those risks are very real, with spills from train derailment (BNSF derailment occurring on an easement across the Swinomish Reservation) and pipelines (Olympic Pipeline Gasoline Spill) happening within the last two years and an unplanned flare from one refinery in 2015 resulting in more than 500 reports of injuries to those on and near the Swinomish Reservation.

In order to guard against those risks, Swinomish expends substantial financial and staff resources. Several Swinomish employees are tasked specifically with emergency management and response as their full-time jobs while biologists, health workers, construction experts, lawyers and other specialists are tasked with attending to a wide range of impacts from the refineries. There are few activities of the Swinomish Indian Tribal Community that are not touched in some way by the reality of the nearby refineries.

Swinomish is impacted, directly and indirectly, by the refineries in at least the following ways:

Vessels:

- Vessel Traffic - More than 27% of Tribal Usual and Accustomed areas for fishing are occupied by shipping lanes and anchorages. Vessels from refineries on the Salish Sea account for a significant portion of that traffic and the majority of vessels at anchor. Anchorages occur almost exclusively within productive crab habitat, preventing those areas from being utilized by Tribal members exercising Treaty fishing rights.
- Vessel Destruction of Fishing Gear - For years Swinomish Tribal members exercising their Treaty-reserved fishing rights have experienced persistent loss or destruction of their valuable fishing gear by vessels operating in the Tribe's Usual and Accustomed fishing areas. Such gear loss impacts Tribal fishers and their families directly when new replacement gear must be purchased, and indirectly when catch is foregone because gear has been lost. Tribal staff and leadership are continuing their years-long efforts to address gear loss.
- Vessel Spill Risk - Shipping Crude Oil and Refined product by vessel accounts for a major risk to the Salish Sea. An allision or collision resulting in an oil spill has the potential to devastate the Salish Sea, decimate populations of fish, crab and other shellfish, and marine mammals, and severely impact Swinomish lands. James Stronach & Aurelien Hospital, *The Implementation of Molecular Diffusion to Simulate the Fate and Behavior Modeling of a Diluted Bitumen Oil Spill and Its Application to Stochastic Modelling*, Conference Paper, (June 2014) <https://www.researchgate.net/publication/274083520>; Julann A Spromberg, Sarah E. Allan & Nathaniel L. Scholz, *Potential Population-level impacts of future oil spills on Pacific Herring Stocks in Puget Sound*, Human and Ecological Risk Assessment Vol. 30 Nos. 1-2 (February 19, 2024) <https://doi.org/10.1080/10807039.2023.2301529>. [Impacts on marine Treaty resources in turn impact Swinomish community members and their families, as well as the economic, cultural and social life of the community as a whole.](#)
- Bunkering risks - The most common fuel and oil spills occur during bunkering. While vessels are being fueled, it is not uncommon for small amounts of fuel and oil to spill into the water. These minor spills impact local habitat and species and their impacts can be cumulative over time, depending on the types of product involved. National Research Council, *Oil in the Sea III: Inputs, Fates, and Effects*, 134 (2003) <http://nap.edu/catalog/10388.html>. [Again, such cumulative harm to marine Treaty resources in turn impacts Swinomish community members, their families and the broader Swinomish community.](#)
- Vessel Noise - Noise from vessels transporting crude oil or refined products disturbs the local ecosystem and impacts several endangered species including Southern Resident Killer Whales. Simone Cominelli et. al., *Noise Exposure from Commercial Shipping for the Southern Resident Killer Whale Population*, Marine Pollution Bulletin 136 (2018) 177-

200 <https://doi.org/10.1016/j.marpolbul.2018.08.050>. Swinomish Tribal members diving to exercise Treaty fishing rights have first-hand experience with the noise generated by vessel traffic.

- Vessel Emissions - While underway, at a berth, or at anchor, vessels rely entirely on fossil fuels for their power. They do not connect to local electricity at any point. This continual burning of fossil fuels is a major contributor to the release of greenhouse gasses, associated impacts, and to the degradation of local air quality. Naya Olmer et. al., *Greenhouse Gas Emissions from Global Shipping, 2013-2015*, The International Council of Clean Transportation (October 2017) <https://theicct.org/publication/greenhouse-gas-emissions-from-global-shipping-2013-2015/>; Cesar Ducruet et. al., *Ports and their Influence on Local Air Pollution and Public Health: A Global Analysis*, Science of the Total Environment Volume 915 (March 2024) <https://doi.org/10.1016/j.scitotenv.2024.170099>

Rail:

- More than a century ago, a rail line was constructed across the Swinomish Reservation and utilized for about one hundred years without the consent of the Tribe or the United States. As a result, the Tribe and U.S. were required to pursue litigation in Federal Court to vindicate the Tribe's ownership of the burdened land and to obtain compensation for use of the land for the rail line.
- Derailment Risk - Derailment of a train poses serious risk to the Swinomish Tribe as the railway used to transport crude oil and other chemicals to the March Point refineries passes through the Swinomish Reservation and very closely to Swinomish's economic development area including its Casino & Lodge, RV park, and retail stores. Derailment is an ongoing concern to Casino & Lodge management. Guests at the Swinomish Casino & Lodge occasionally comment on the derailment risk, and guests at the RV park stay immediately adjacent to the tracks and are impacted by the noise of moving trains. The local railway also crosses the Swinomish Channel and over a portion of Padilla Bay. Derailments can be *relatively* minor, as was the case when a train derailed on the Swinomish Reservation in March of 2023 and released around 2,100 gallons of diesel fuel, or they can be catastrophic as has been the case multiple times in Washington State, the United States and Canada. A catastrophic derailment on the Swinomish Reservation could result in injury or worse for guests and staff at the Swinomish RV park immediately adjacent to the rail line or at the nearby Swinomish Casino & Lodge, as well as damage to and closure of these and other Swinomish commercial ventures in the area for weeks, months or longer. Such business interruption has the potential to significantly damage the Swinomish economy, and therefore the Swinomish governmental services and programs the Tribe's commercial ventures support, and the community members and Reservation residents who benefit from those programs and services. A catastrophic derailment into the Swinomish Channel or Skagit River could inundate not only the Channel, River and adjacent shorelines with oil, but also more distant areas impacted by spilled fluids swiftly transported by the strong tidal currents in the area, including the Swinomish Reservation's shorelines, the Swinomish Village, the Swinomish Casino & Lodge, the Swinomish Clam

Garden, and important cultural areas such as Lone Tree Point and Kukutali Preserve. On a broader scale, railways for refineries on the Puget Sound are regularly located along and crossing waterways and on the shores of the Salish Sea. Derailments and spills into those waters with their strong and fast tidal currents would also dramatically impact and alter where Swinomish members could fish.

- Bay Access and Land Use Optimization - The presence of the railway impedes direct terrestrial access to Padilla Bay from the adjacent lands of the Swinomish Reservation, and prevents the Tribe's optimal utilization of those lands as part of its economic enterprises.
- Swinomish Channel - In order for the railway to reach the March Point Refineries, it must cross the Swinomish Channel. To do so, the railroad constructed a swing bridge, now many decades old. This bridge severely limits Swinomish fishing and Fisheries Enforcement vessels traveling through the Swinomish Channel when it is "closed" and only allows free access when it is opened. This bridge is a major impediment to Swinomish fishers, particularly with the very short windows for fishing that are common for Swinomish fisheries. Delays in accessing waters north of the Swinomish Channel reduce the time that fishers can actually engage in Treaty fishing. For instance, if fishing for shrimp is opened for four hours north of the Channel but fishers are delayed for an hour by the closure of the swing bridge, the time available for fishing is reduced by 25%. Such travel delays and reduced fishing opportunity have a direct and significant impact on Treaty fishing income to the fishers and their families. Similarly, the swing bridge is a major potential point of failure both from a mechanical standpoint and from a human error standpoint. Any failure of the swing bridge has the potential to cause a catastrophic derailment into the Swinomish Channel.
- Train Emissions - Trains burn fossil fuels and contribute to the increase in greenhouse gases and climate change from which the Swinomish Tribe is experiencing significant impacts. Train emissions also degrade the local air quality resulting in health impacts to community members. *Technology Assessment: Freight Locomotives*, California EPA, Air Resources Board (November 2016) https://www.arb.ca.gov/msprog/tech/techreport/final_rail_tech_assessment_11282016.pdf
- Viewshed – As noted above, the railway was installed in the late 1800s, over the objections of the Swinomish Tribe and the United States, along the shores of Padilla and Fidalgo Bays. Both of those bays have significant cultural importance to the Swinomish people and commercial importance as they provide the main view for the Swinomish Lodge and nearby RV park. While some guests may enjoy watching trains, the regular presence of trains traveling to and from the refineries impedes and impairs the viewshed of those two bays significantly.

Pipeline:

- Decades ago, pipelines for petroleum product transport were constructed across the Swinomish Reservation without the consent of the Tribe or the United States. As a result, the Tribe and U.S. were required to pursue litigation in Federal Court to vindicate the Tribe's ownership of the burdened land and to obtain compensation for use of the land for the pipelines.
- Pipeline Spill Risk- When pipelines spill it is more difficult to both detect and stop those spills than other methods of transporting oil. Mutiu Adesina Adegboye, Wai-Keung Fung & Aditya Karnik, *Recent Advances in Pipeline Monitoring and Oil Leakage Detection Technologies: Principles and Approaches*, Sensors 2019 (June 4, 2019) <https://doi.org/10.3390/s19112548>. Remediation of underground pipeline spills requires far more effort and land disturbance than spills to the surface. Most recently, the Olympic pipeline spilled near the Swinomish Reservation in December of 2023. The Swinomish Tribe exerted months of effort as part of the remediation and restoration team, a process that continues even today. Three separate pipelines cross the Swinomish Reservation and Swinomish Channel, carrying refined product from the refineries. A spill from any of those pipelines would impact the Reservation and could result in the disruption or closure of the nearby Swinomish Casino & Lodge, the RV park, and several Swinomish owned retail stores. A pipeline spill into the Channel would result in the impacts described in connection with a derailment of rail cars and spill into the Channel.
- Pipeline Presence – Just like the rail line, the continuing presence of three pipelines built across the Swinomish Reservation without the Tribe's consent precludes the Swinomish Tribe from utilizing its land above and adjacent to those pipelines and effectively reduces Swinomish's total usable land. In this, the continuing presence of the pipelines diminishes the land base reserved by the Tribe for its own use in the Treaty of Point Elliott.

Refineries:

- Refinery Operations - Refineries are inherently dangerous and large industrial plants. The location of two refineries on March Point poses a significant threat to the Swinomish Tribal members, to the Reservation, and to guests and staff of Swinomish economic enterprises. Industrial accidents can and do occur which result in impacts to neighboring communities. For instance, the 2010 explosion and fire at the Tesoro Anacortes Refinery killed 7 workers at the refinery and released chemicals into the air which sickened those nearby, including Tribal members. In 2015, an unexpected flare sickened more than 500 on and near the Swinomish Reservation, including Tribal members. Additionally, populations living within 10 miles of refineries experience increased risk of multiple types of cancer – and the entirety of the Swinomish Reservation is within 10 miles of both the March Point refineries. Stephen B. Williams, et. al., *Proximity to Oil Refineries and Risk of Cancer: A population Based Analysis*, JNCI Cancer Spectrum, Volume 4 Issue 6 (October 7, 2020) <https://doi.org/10.1093/jncics/pkaa088>
- Refinery Emissions and products - Refinery operations and the use of refinery products release greenhouse gases contributing to climate change and degrading local air quality. Refinery emissions pose potential health risks to the Reservation population, Swinomish

business guests and employees, and the Swinomish Shellfish Company aquaculture operation in Similk Bay, located directly south of the refineries. Indeed, odors from the refinery can be detected at times by Shellfish Company staff. Some guests at the Casino & Lodge do not like the proximity of the refineries, concerned that they are polluting.

- Viewshed - The March Point refineries are located on the shores of Padilla and Fidalgo bays, and their infrastructure physically dominates the area. The refineries are visible from the Swinomish Links Golf course, and from some locations at the Swinomish Casino & Lodge. Like the rail line, the presence of extremely large industrial plants on these waters severely degrades the viewshed of the area.
- Refinery Presence Precludes Land Use - The March Point refineries are located on lands that are part of the Swinomish Treaty Reservation that were illegally occupied by non-tribal settlers and then purportedly severed from the Reservation by an Executive Order. Those lands were important areas for traditional food production, including camas propagation and harvesting, and for cultural practices. The presence of the refineries precludes access to and use of the land for those purposes and has potentially permanently eliminated those lands for food production purposes.

Future Refinery Impacts

The March Point refineries could provide opportunities for a greater sharing of their benefits with the Swinomish Tribe and its members, and for reducing their risks and detrimental impacts on the Tribe, its members, resources and Reservation. In addition, as the larger economy transitions to address global warming, there may be opportunities for achieving some degree of historical justice as refineries transition, downsize or close. The lands that now support the refineries will remain should operations cease. It could bring Swinomish a measure of historical justice and an opportunity to create its own, alternative future, to have those lands returned to Tribal ownership as the Treaty provided in 1855.

Thank you again for this opportunity to participate in evaluating the future of refineries in Washington. We look forward to further discussions on the impacts to the Swinomish Indian Tribal Community from Oil Refineries and their operations and the myriad options for the future. If you have any questions about these comments or would like to discuss them, please do not hesitate to contact me.

Sincerely,



Steve Edwards, Chairman