

November 15, 2013

U.S. Army Corps of Engineers  
Washington Department of Ecology  
Cowlitz County

**Re: Scope of Review for EIS - Millennium Bulk Terminals Longview Proposal**

MBTL Environmental Reviewing Agencies:

Thank you again for the opportunity to comment on the scope of impacts to be considered in the Environmental Impact Statement (EIS) for the Millennium Bulk Terminal Longview (MBTL) proposal. The Gorge Commission (Commission) is the bi-state land use planning agency for the Columbia River Gorge National Scenic Area upriver from the proposed terminal site. This letter supplements the Columbia River Gorge Commission's previously submitted September 9, 2013 comment letter.

Following the Commission's September 9 letter, members of the Commission and Commission staff met with Department of Ecology staff Sally Toteff, Diane Butorac, and Paula Ehlers on September 30, and again on October 2, 2013. During the two meetings, the Commission learned more about the project and the EIS process. The Commission also provided an overview of Columbia River Gorge National Scenic Area authorities and discussed its September 9, 2013 comments in greater detail.

The September 9 letter explained that in the National Scenic Area the Commission evaluates impacts of proposed development for consistency with standards in the Management Plan for the Columbia River Gorge National Scenic Area, and suggested the Management Plan would help to identify potential impacts for reviewing agencies to consider for study in the EIS. Ms. Toteff then recommended that the Commission provide a discussion of those authorities in a supplemental comment letter to help the reviewing agencies determine how to evaluate impacts in the National Scenic Area.

The Gorge Commission is a bi-state land use planning agency that administers the Columbia River Gorge National Scenic Area Act, a federal statute codified under 16 U.S.C. §§ 544 to 544p. The National Scenic Area Act contains Congress' consent, as required by Article I, § 10 of the U.S. Constitution, for Washington and Oregon to enact the Columbia River Gorge Compact, which creates the Commission and establishes the Commission's authority to adopt and implement the Management Plan. RCW 43.97.015.

A compact that has received consent becomes federal law itself and is entitled to all of the attributes of federal law, including supremacy over conflicting state law. *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Accordingly, Oregon and Washington courts also treat the Management Plan that the Gorge Commission has adopted to administer the compact as federal law. See, e.g., *Klickitat County v. State*, 71 Wn. App. 760, 767, 862 P.2d 629 (1993) stating, "The Commission's land management plan and the act's provisions

relative to the plan are federally mandated, and do not constitute a state program." See also *Friends of the Columbia Gorge v. Columbia River Gorge Comm'n*, 346 Or. 366, 410, 213 P.3d 1164 (2009) using federal deferential standards when reviewing the Commission's interpretation of the Management Plan.

The National Scenic Area Act required the states, as a precondition to Congress' consent to the compact, to provide state agencies and counties direction and authority to carry out their functions and responsibilities in accordance with the National Scenic Area Act and the Columbia River Gorge Compact. Washington did so in RCW 43.97.025, thereby specifically *requiring state agencies and counties to carry out their functions and responsibilities in accordance with the Act, the Compact and the Management Plan.*

Because the authorities in and for the National Scenic Area are federal authorities, and pursuant to RCW 43.97.025, the reviewing agencies are bound to evaluate impacts from the proposal in accordance with the standards in the National Scenic Area Act, the Gorge Compact, and the Management Plan. This means that the reviewing agencies must use the National Scenic Area definition of "adversely affect," 16 U.S.C. § 544(a), and must rely on the Commission's interpretation of that term when evaluating and mitigating impacts in the National Scenic Area:

- (a) "adversely affect" or "adversely affecting" means, except as used in section 544m of this title, a reasonable likelihood of more than moderate adverse consequences for the scenic, cultural, recreation or natural resources of the scenic area, the determination – of which is based on -
- (1) the context of a proposed action;
  - (2) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence;
  - (3) the relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts;
- and
- (4) proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant affects to an insignificant level.

The Management Plan for the National Scenic Area contains the standards for determining when a proposed development would have an adverse effect in the National Scenic Area. Ms. Toteff requested that the Commission specify which provisions in particular the reviewing agencies should evaluate. Providing that specification and explaining the application of those provisions is a lengthy and complex task. The scope of that task depends heavily on details of the proposal that we do not currently have and are not fully understood from materials available to public. Further, the Commission does not currently have the staff and resources available to undertake such a review or provide the analysis without abandoning other critical National Scenic Area responsibilities.

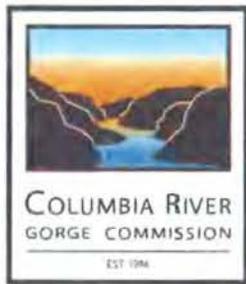
The Commission would, however, be willing to assist the agencies and the EIS contractors on a reimbursable basis for this type of technical assistance or to review the proposal for impacts in the National Scenic Area. Notwithstanding the Commission's assistance, the reviewing agencies must still comply with the standards in the National Scenic Area Act, the Gorge Compact, and the Management Plan.

Thank you again for the opportunity to comment and to clarify the reviewing agencies' responsibility to the National Scenic Area as your review of the proposal proceeds.

Sincerely,



Darren J. Nichols  
Executive Director



September 9, 2013

U.S. Army Corps of Engineers  
Washington Department of Ecology  
Cowlitz County

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The Gorge Commission understands that the Millennium Bulk Terminal Longview project recently removed coal handling from its application but that other commodities will be transported to the terminal by rail and river vessel through the heart of Columbia Gorge National Scenic Area. We also understand the Department of Ecology and Whatcom County are evaluating another proposal – the Gateway Pacific Terminal – for a broad range of impacts including the impacts from rail and vessel transportation and greenhouse gas emissions from end-use coal combustion. The Gorge Commission supports your agencies' rigorous, thorough, objective review of impacts generated by the Millennium Terminal Project similar to the review of the Gateway Pacific Terminal.

In the National Scenic Area the Gorge Commission evaluates impacts for consistency with standards in the *Management Plan for the Columbia River Gorge National Scenic Area* and suggests the *Management Plan* would be helpful in identifying potential impacts to consider in the EIS. The National Scenic Area Act, the Gorge Compact, and the *Management Plan* are specifically written to protect some of the Northwest's most iconic scenic, natural, cultural and recreation resources, and to support the regional economy. Those documents are available on the Commission's website at [www.gorgecommission.org](http://www.gorgecommission.org).

The Commission would be pleased to assist your agencies with any technical questions about the National Scenic Area and its legal authorities. Please do not hesitate to contact me.

Sincerely,

Darren J. Nichols  
Executive Director