



LUMMI INDIAN BUSINESS COUNCIL

2665 KWINA ROAD BELLINGHAM, WASHINGTON 98226 (360) 312-2000

DEPARTMENT _____

DIRECT NO. _____

Col. John G. Buck
Seattle District Commander
Seattle District, U.S. Army Corps of Engineers
P.O. Box 3755
Seattle, WA 98124-3755

January 5, 2015

SUBJECT: Lummi Nation Request for Denial of Permit for the Proposed Gateway Pacific Terminal Bulk Dry Goods Shipping Facility (Ref. No. NWS-2008-260).

Colonel Buck:

The Lummi Nation is opposed to the Gateway Pacific Terminal (Ref. No. NWS-2008-260) project proposed at Xwe'chi'eXen (Cherry Point). (See attached resolution). We are requesting that the U. S. Army Corps of Engineers (Corps) take immediate action and deny the permit application based, *inter alia*, on the project's adverse impact on the treaty rights of the Lummi Nation. The impacts on the Nation's treaty rights associated with this project cannot be mitigated.

The waters and tidelands impacted by this project are an integral part of the usual and accustomed fishing places of the Lummi Nation. *United States v. Washington*, 384 F. Supp. 312, 360-61 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976); see also, *United States v. Washington*, 873 F.Supp., 1422 (W.D. Wash. 1994), *aff'd in relevant part*, 157 F.3d 630, 643-644, 646-47 (9th Cir. 1998). As part of the permitting process for this project, the Corps is required to ensure that the Nation's treaty rights are not abrogated or impinged upon. *Northwest Sea Farms v. United States Army Corps of Engineers*, 931 F. Supp. 1515 (W.D. Wash. 1996).

Review of the impacts associated with this project, including, but not limited to, those analyzed in the *Gateway Pacific Terminal Vessel Traffic and Risk Assessment Study* lead to the inescapable conclusion that the proposed project will directly result in the substantial impairment of the treaty rights of the Lummi Nation throughout the Nations' "usual and accustomed" fishing areas. (See attached sections). The Lummi have harvested at this location since time immemorial and plan to continue into the future. The proposed project will impact this significant treaty harvesting location and will significantly limit the ability of tribal members to exercise their treaty rights. (See attached declarations).

Additionally, the Lummi Nation has a sacred obligation to protect Xwe'chi'eXen based on the area's cultural and spiritual significance. The Corps is obligated to comply with the mandates of the National Historic Preservation Act, specifically section 106, in evaluating the project's potential impacts. This obligation is in addition to the Corps' obligations that spring from our treaty rights. The Lummi Nation is opposed to this project due to the cultural and spiritual significance of Xwe'chi'eXen, and intends to use all means necessary to protect it.

In addition to the proposed project's unacceptable and unavoidable impacts to the Nation's access to this significant treaty harvesting location, and to the cultural integrity of the site, the proposed project location is within an especially rich and fertile marine environment that serves as important habitat for a number of forage fish, finfish, and shellfish (including several threatened and/or endangered species) that are inextricably linked to the Lummi *Schelangen* ("Way of Life"). Anticipated impacts to this significant aquatic environment include, but are not limited to, substantially increased ballast water discharges and associated risk of introducing invasive species, contaminant spills (product, bunker fuel oil, crude oil and refined products from adjacent facilities), noise, and vessel traffic. The impacts to these critical marine waters from coal alone may include: smothering, toxicity, substrate change, accumulation, and water quality degradation.

The devastating environmental impacts associated with this project, as well as the trust responsibility of federal agencies to ensure the protection of the treaty rights of the Lummi Nation, mandate the denial of any and all permits under the Corp's jurisdiction.

Respectfully,



Tim Ballew II, Chair
Lummi Indian Business Council

cc: Senator Patty Murray
Senator Maria Cantwell
Representative Suzan DelBene
Representative Rick Larson
Representative Jamie Herrera Butler
Representative Cathy McMorris Rodgers
Representative Derek Kilmer
Representative Jim McDermott
Representative David Reichert
Representative Adam Smith
Representative Denny Heck
Governor Jay Inslee
USACE (DC)