

United States Senate

WASHINGTON, DC 20510

July 28, 2015

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army for Civil Works
108 Army Pentagon, Room 3E446
Washington, DC 20310

Lieutenant General Thomas P. Bostick
Commanding General and Chief of Engineers
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314

Assistant Secretary Darcy and Lieutenant General Bostick:

We write about potential actions by the U.S. Army Corps of Engineers (the “Corps”) which would short circuit the public review period for a very important project to our nation—the Gateway Pacific Terminal expansion. We respectfully request your personal attention to this matter and to ensure the review process on the Gateway Pacific Terminal is completed.

The Gateway Pacific Terminal is a proposed new export facility in Washington State that, if built, will be able to move 54 million tons of bulk commodities, including American grain, potash and coal to Asian markets. The Gateway Pacific Terminal will create thousands of jobs and millions of dollars in tax revenue in Pacific Northwest states.

The project has been undergoing environmental review as part of the National Environmental Policy Act (NEPA) analysis over 28 months. The draft EIS is expected to be released in March 2016. We understand that the Lummi Indian Nation and other local tribes have raised concerns over the impact the new facility could have on their Usual and Accustomed (U&A) fishing rights. As part of these concerns, the Seattle District of the Corps has indicated it might conclude a de minimis determination on the impact of the project on the U&A fishing rights prior to the issuance of a draft EIS, as soon as the end of July 2015.

The EIS process is an established tool used to identify potential environmental impacts and review opportunities to potentially redesign the project or operations (“mitigations”) to avoid or minimize these potential impacts. Typically, the de minimis threshold is appropriately evaluated after considering potential mitigations. In at least four cases where U&A fishing rights were evaluated, the Corps elected to develop a draft EIS and thoroughly evaluate mitigating features before determining whether a project would have a de minimis effect on U&A rights.

Moreover, according to a *Memorandum For the Record, U.S. Army Corps of Engineers Scope of Analysis and Extent of Impact Evaluation for National Environmental Policy Act Environmental Impact Statement* issued on July 3, 2013, the Corps committed to addressing compliance with tribal treaty and trust responsibilities *within* the scope of the EIS for the Gateway Pacific Terminal project, not prior to completion or publication of a Draft EIS.

Thus, we respectfully and strongly urge the Corps to complete the NEPA process and develop project alternatives including possible mitigation efforts before determining de minimus impacts to any tribes' U&A fishing rights.

Thank you for your personal attention to this matter and we look forward to your response.

Sincerely,

Steve Davis

John Hatch

Shelley Moore Caputo

John Barrasso

James McLaughlin

Michael B. Eiji

Greg Anderson

Will McCann

John Thune

John Long

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[Signature]

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Signers:

Senator Steve Daines

Senator Orrin Hatch

Senator John Barrasso

Senator Mike Enzi

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Senator James M. Inhofe

Senator Cory Gardner

Senate Majority Leader Mitch McConnell

Senator John Thune

Senator John Cornyn

Senator David Vitter

Senator James E. Risch

Senator Roger Wicker

Senator Mike Rounds

Senator Deb Fischer

Senator Dan Sullivan