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Title: President, Longview/Kelso Building and Construction Trades Council

Representing: Washington State Building and Construction Trades Council

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Written Testimony

Introduction

I would first like to say thank you to the Chair and the Committee Members for the opportunity to share my experience with the NEPA process and its effects on the projects in my community. My name is Mike Bridges and I am the President of the Longview/Kelso Building and Construction Trades Council and I serve on the Executive Board of the Washington State Building and Construction Trades Council.

The State Council represents 70,000 skilled men and women in the Trades whose livelihoods depend on the construction of new projects. I have worked alongside these men and women as a Union electrician, and now work to serve them by securing opportunities to build world-class projects, many of which must be permitted through the NEPA process.

A number of these new projects are in Southwest Washington and represent a total of five billion dollars of private capital investment, millions in tax revenue, and thousands of jobs. The majority of my comments will discuss the Millennium Bulk Terminals Coal Export Project, which will export 44 million tonnes of low-sulfur American coal to our democratic allies in Japan and South Korea. This project has been under review for over five years. Millennium will provide millions in taxes for the region, support thousands of family-wage jobs during construction and operations, all while cleaning up and redeveloping a 1940's era aluminum smelter.

Another significant project is the proposed Vancouver Energy terminal in Vancouver. This critical infrastructure would enable the safe transfer of North American crude oil from rail to ship, and ultimately the manufacturing of transportation fuels that we use every day at West Coast refineries. This project has been under review for over four years. The Vancouver Energy project will provide \$2 billion in economic benefit for the region, support thousands of family-wage jobs during construction and operations, and strengthen U.S. energy independence with the potential to displace up to 30 percent of the foreign oil imported to the West Coast with lower-carbon North American crude.

Both these projects have suffered significant permitting delays. But for our purposes today, I will use as an example the Millennium Bulk Terminals coal export project in Longview, which is where I have built my home and am raising my family.

Background on Millennium Bulk Terminals

Longview is an industrial town built on natural resources, manufacturing, and trade – all of which are dependent on our deep-water ports on the Columbia River. Yet we are a rural community of less than 50,000 residents.

The town has weathered multiple economic downturns because we have a well-established industrial area that is still home to major global manufacturers who rely on ports to export everything from forest products to grain to commodities that are mined.

But we have lost a significant number of family-wage jobs through those economic downturns because of plant closures and staff reductions in manufacturing and industrial facilities. We need to create new jobs and opportunities for our children by diversifying, and the Millennium Bulk Terminals project is an opportunity to provide just what my community needs.

As a prerequisite for permits, two Environmental Impact Statements (EIS) are needed, although both documents study much of the same topics. One is prepared under state law by the State of Washington Department of Ecology and Cowlitz County (the SEPA EIS). The second is prepared under NEPA by the Seattle District Corps of Engineers.

Millennium submitted permits in February of 2012. The NEPA Draft EIS published 3 and a half years later. As we approach the six-year mark, the Final EIS has still not published.

Washington State published its 13,000-page State Final EIS back in April 2017, even though its environmental analysis was far larger in scope than the federal.

The first permit required for the coal export terminal, the Critical Areas Permit, was issued in July and in the absence of any challenges, both the SEPA EIS and the permit are considered final and no longer subject to challenge.

The NEPA EIS requires a 401 Water Quality Certification by the State of Washington Department of Ecology. The Department of Ecology denied the 401 Water Quality Certificate “with prejudice” so Millennium is both appealing that denial to the State of Washington Pollution Control Board and has filed a lawsuit against the Department of Ecology in Cowlitz County Superior Court.

Despite clear limitations expressed by Congress under the Clean Water Act, Section 401, which states base their certification decisions on specifically enumerated water quality grounds, Ecology’s purported bases for denial with prejudice were, in fact, entirely unrelated to water quality.

This is the first time in Ecology’s history that it decided to deny a 401 certification with prejudice based on SEPA findings it made concerning interstate rail capacity, train traffic (and its attendant effect on vehicular traffic), train emissions, vibrations and noise, and train safety.

While the 401 Water Certificate is under legal challenge, the NEPA EIS is stalled, although there is only a few weeks of work left to complete it.

The second set of permits for Shoreline Development was subject to a public hearing conducted by a Hearing Examiner appointed by Cowlitz County. The Hearing Examiner denied the shorelines permits also on the SEPA findings concerning interstate rail capacity, train traffic (and its attendant effect on vehicular traffic), train emissions, vibrations and noise, and train safety. Millennium is now appealing that decision to the State of Washington Shorelines Hearing Board.

Another legal challenge is underway as a result of the Department of Natural Resources (DNR) withholding consent to a sublease between the property owner, Northwest Alloys (a subsidiary

of Alcoa), and Millennium. Millennium prevailed in that lawsuit when the judge ruled that DNR action in withholding the sublease was “arbitrary and capricious.”

Abuse of NEPA Process

I took time away from my job, as did a number of my members, to participate in the NEPA process provided by the Corps of Engineers. Rather than functioning as a useful tool to educate agency decision-makers of the environmental pros and cons of a proposed project and to solicit input from the public as Congress intended, NEPA has been used to protract and impede agency officials from making a sensible permit decision in a reasonable amount of time. I have testified at multiple public hearings across Washington State over a period of 5 years and yet, the Corps of Engineers has still not completed its environmental review.

I attribute the delay in the NEPA Final EIS in part to the way in which the process has been hijacked by activists seeking to deny projects that don't align with their political agendas.

NEPA was not enacted to function as a political process to allow members of the public to voice their approval or disapproval of a controversial project. Yet the multiple NEPA hearings I attended on the Millennium project functioned as a public voting booth of sorts; members of the public were both allowed and encouraged to use the public forum to voice their personal sentiment on whether the project should be permitted. At these public hearings, I witnessed singing grandmothers, people dressed as their favorite endangered species, and other theatrical antics, designed not to inform agency officials but to publically protest the project.

Hundreds of people wearing red t-shirts were literally bussed in from other cities and states to protest against the project. Hundreds of thousands of people were provided form letters by local and national environmental organizations to send to the Corps to clog the Corps' record with anti-project comments so that project opponents could tally the “vote.”

Hundreds of local supporters showed up and outnumbered the out-of-town protestors – which was great to see, but we should not have to take time out of our work day to support jobs and private investment in our community – and pretend that this is useful to the regulatory process.

This is not the informed and reasonable process that Congress intended.

Millennium continues to move forward. The project was issued one permit, but had other permits rejected which are now under appeal.

These permits were denied because of impacts which are the jurisdiction of the federal government, those being interstate rail capacity and effects of train traffic, as well as tribal concerns and endangered species. Had the NEPA EIS been published, this might not have happened.

Ironically, we fear the Corps will not finalize their work because of these politically motivated state decisions.

The Building Trades supports responsible and consistent environmental regulations and has been involved in environmental improvements at industrial facilities for decades and has also been leading the way to building and investing in renewable energy technology.

I am not here today to encourage deregulation. The Building Trades support a thorough permitting process, but that process needs to adhere to the actual regulatory requirements and follow a reasonable timeline.

The Building Trades believe that projects like Millennium are essential in the journey towards cleaner sources of energy, and we know that this terminal can be built and operated safely and within the environmental requirements of the law. And it can provide the family-wage jobs that my members and others in the community so desperately need in Cowlitz County.

Cost of Regulatory Delays to People's Lives

We know what it means to live in an industrial town. And we support Millennium Bulk Terminals and its project in Longview because we know what it will do for us locally.

Our unemployment rates speak volumes, as do the large number of our families who have to rely on free-and-reduced lunches in our schools each day.

Finding family-wage construction trade jobs in Cowlitz County is tough. Many of our skilled Trades workers are forced to make long daily commutes or even travel to other states to find steady work.

The Millennium project and others like it present an opportunity for my members to return to the days when they could go to work in the morning and come home at the end of the day in time for dinner with their family.

Projects like Millennium also provide the Building Trades with the opportunity to replace our aging skilled workforce through our on-the-job training programs, which we refer to as apprenticeship. We can only admit new apprentices into our programs when there are apprenticeship job opportunities in the marketplace.

The Millennium project is essential because its size and duration makes it possible for us to responsibly gauge how many new people to start on a career path so we can keep them busy learning and working throughout their entire training.

Only 16% of residents of Cowlitz County have a college degree. I am a firm believer that our children can have a future in Longview with a good family-wage job and do not necessarily need to have a college degree.

It has dominated the news lately that the majority of high school graduates do NOT get a college education. And many of those that do and want to return to the town where they grew up find that the job opportunities are few and far between, and end being forced to make a home in a different community. This has prompted much discussion at all levels of government about how to expand CTE – Career Technical Education.

Career Technical Education is precisely what the Building Trades do. Each Trade covers the cost of training of the next generation of skilled workers, including tuition, books, and tools, all while providing benefits like health care and pension contributions. We do this without any government funding because these workers are too important to us to let budget shortages and partisan politics get in the way of their careers.

This commitment to steady employment throughout the apprenticeship program is especially important for some of the more vulnerable groups we strive to bring into the Building Trades, such as our military veterans. Our Helmets to Hardhats program helps service men and women transfer their skills to careers within the construction industry. With a suicide rate of about 20 veterans per day nationally, we want the apprenticeship to serve veterans as they have served our county by providing them with the dignity, self-worth, and family wages their sacrifice deserves.

Millennium signed a Project Labor Agreement with the Building Trades way back in 2013. This was unusual because it was so early in the process, but Millennium truly wanted to show its commitment to providing family-wage jobs for members of the community.

As part of the Project Labor Agreement, the company pledged to invest in our future by creating opportunities for new workers to learn the trades through apprenticeship programs. It also contains a commitment to the Helmets to Hardhats program, which is required in all Building Trades Project Labor Agreements.

Millennium agreed to use skilled Union Building Trades workers on the project, but also agreed to search for these workers locally first.

Without the tech boom that the Puget Sound area has enjoyed, our community has had to look for other economic opportunities that play to our strengths as an industrial community with access to major trade routes.

The terminal would be an asset to the state's trade network, providing private investment in rail and other infrastructure to help ensure rapid delivery of other commodities.

This creates jobs in areas well beyond the boundaries of Millennium's project.

It also supports infrastructure for future shorelines development plans – and the jobs they bring – in places close to home, like Barlow Point, a property just downriver from Millennium that the Port of Longview recently acquired for growth.

Millennium's project would add millions in annual tax revenue for schools and public services. At a time when state revenue is needed most, we've suddenly become very picky about where that tax money should come from — which works if you live in Seattle.

Millennium is not asking for special tax breaks, like Boeing did, or challenging communities to bid against each other, like Amazon is doing. Millennium has just asked our community, and our state, to treat this project's applications like other port projects have been treated.

This project has endured the most rigorous scrutiny ever by state regulators under the most stringent environmental standards in the country. Opposing industrial activity, imposing endless regulations and cherry-picking export commodities leaves no future for Cowlitz County. My Building Trades members just want the same chance that their parents and grandparents had here in Longview, which is to have a local job with wages that can support a family and actually get to spend time with that family after a full day of work.

Millennium's project will provide the jobs and opportunities our community needs. That is why the Building Trades support the project.

And I am not here today just in support of my members. As part of the Labor Movement, Building Trades cares not just about our craft workers, but all workers. In addition to the

tradesmen and women that will be employed during construction of the facility, the Millennium project is projected to produce 300 direct and indirect full-time, family-wage jobs.

And our concerns are not just limited to the jobs my community needs now. We also have real concerns about our state's reputation and economic future. The seemingly endless and arbitrary regulatory process in Washington State will discourage future projects that would employ members of the Building Trades and my community.

Recommendations

In the long term, we in the Building Trades encourage the Committee to put some controls around the process to prevent this type of abuse. There should be a limit to the amount of time an agency can spend on a NEPA process, the type of public process it provides, and the number of pages the Final EIS consumes.

The state EIS was published in April of this year and was more than 13,000 pages- . The Final Corps EIS should not follow suit. The Committee should amend the statute to prevent this type of abuse of process, to eliminate the political gamesmanship that ensues, and to return the statute to its original intent.

But in the short term, we ask the Committee to insist the Seattle Corps District publish the Final EIS for Millennium. As someone who drives every day through Longview and sees the devastation caused by the lack of good jobs, I am asking you to help my community. The regulatory process in Washington State is broken. The result has been years and millions of dollars of lost wages, and millions of dollars of added cost to projects like Millennium during the review process. Please don't let this continue with the federal process.

Arbitrary and capricious: Rule of law binds agencies

By ROB McKENNA, Former Washington State Attorney General
Olympian Newspaper 11/17/2017 <http://www.theolympian.com/opinion/op-ed/article185225268.html>

After five years and thousands of hours of public testimony, it took a Cowlitz County judge just five seconds to say what many of us have long suspected: some state regulators are out of control, and important parts of the state regulatory process are now tools of activist groups.

Cowlitz County Superior Court Judge Stephen Warning made his comments in response to a dispute over access to the Columbia River for the Millennium Bulk Terminals project. They suggest a level of frustration not often seen from the bench. The Millennium case is a striking example of how agency regulatory processes can be appropriated by activists seeking to deny or block projects that don't align with their political agendas.

Judge Warning, though, saw through that strategy. His October ruling is based on the principle that the rule of law must be applied evenly, regardless of politics. Regulatory agencies must not exceed the authority granted to them by our elected representatives in the Legislature.

The dispute before Judge Warning involves a lease from our state Department of Natural Resources currently held by Northwest Alloys, and its sublease with Millennium Bulk Terminals. Millennium's proposed coal export terminal in Longview, Washington, has been under local and state regulatory review for a record five years, and counting. At issue is whether Northwest Alloys and Millennium can build a dock under the lease.

Just prior to leaving office this year, former DNR Lands Commissioner Peter Goldmark denied the requested sublease, citing fiscal issues — not environmental issues — for the denial. Three activist groups, including Columbia Riverkeeper, Washington Environmental Council, and Sierra Club asked the court to consider environmental issues in reviewing Goldmark's decision. In July, Warning denied them their request, noting that the lease denial must rest on the words in Goldmark's denial letter.

Warning again took up the lease issue and whether DNR acted legally in denying the sublease. He did not mince words, calling DNR's decision "arbitrary and capricious," highlighting how out of line the DNR decision really was.

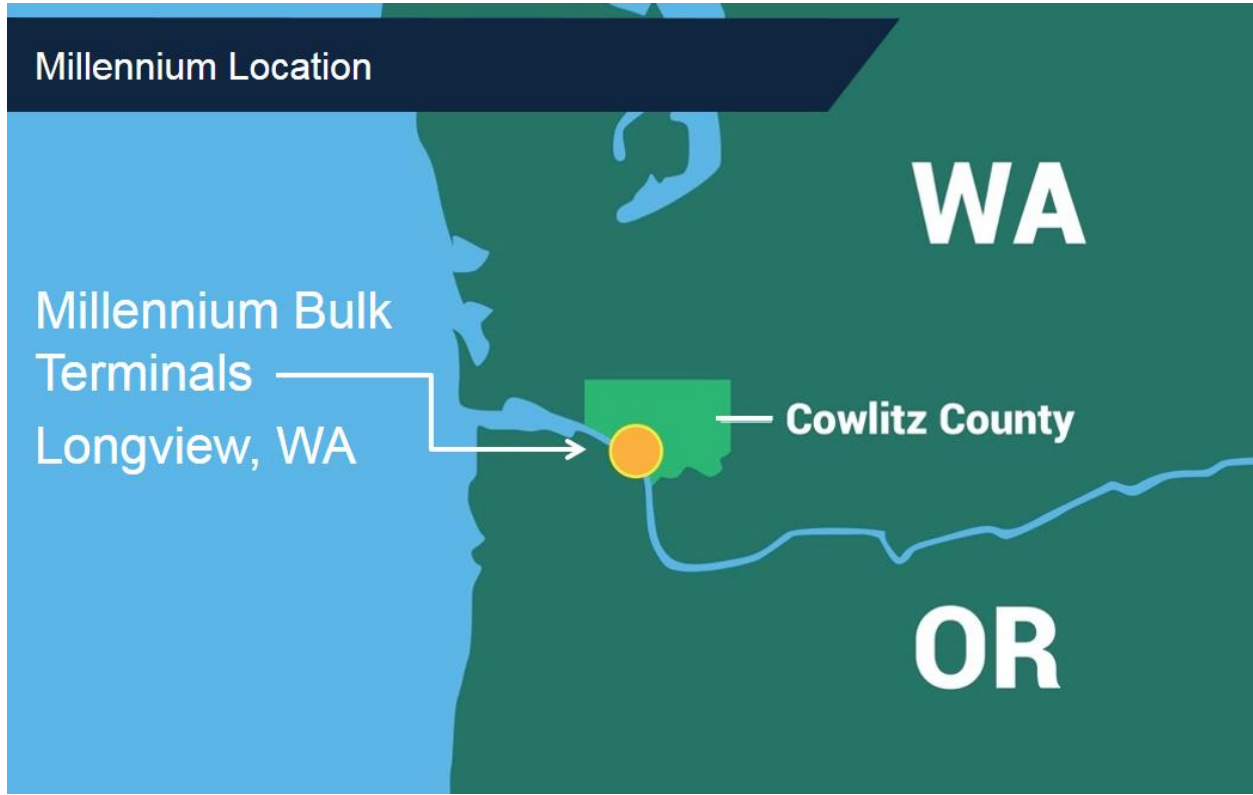
We've seen this sort of agency activism before on this particular project. In September, the State Ecology Director denied Millennium a water permit based on nine factors, none of which had anything to do with water. The director has taken to Twitter on multiple occasions to issue comments about the project, the tenor of which seems more befitting an activist than regulator.

All of this casts doubt on our state regulatory process. Businesses and individuals hoping for a fair and timely review of their projects in our state are now likely to think twice before starting a project here. In the case of Millennium, they're five years and \$15 million into this process. Other investors are unlikely to have this kind of time or money for such a protracted process.

Homeowners have also been affected by serious regulatory delays. Just ask rural landowners who have been dramatically affected by the Hirst water rights decision. They can share similar stories of wasted time and endless fees for wells they cannot dig, on land they cannot sell — dream homes that have become regulatory nightmares.

Abuse of the regulatory process further political aims is an affront to our democracy and must not go unchecked. Judge Warning said as much in as little as three words. Let's hope they speak loud enough for all to hear them and end such abuse.

Rob McKenna served two terms as Washington's attorney general. He is currently in private practice with Orrick, Herrington & Sutcliffe LLP, where he serves as a partner and co-chair of the firm's public policy group.

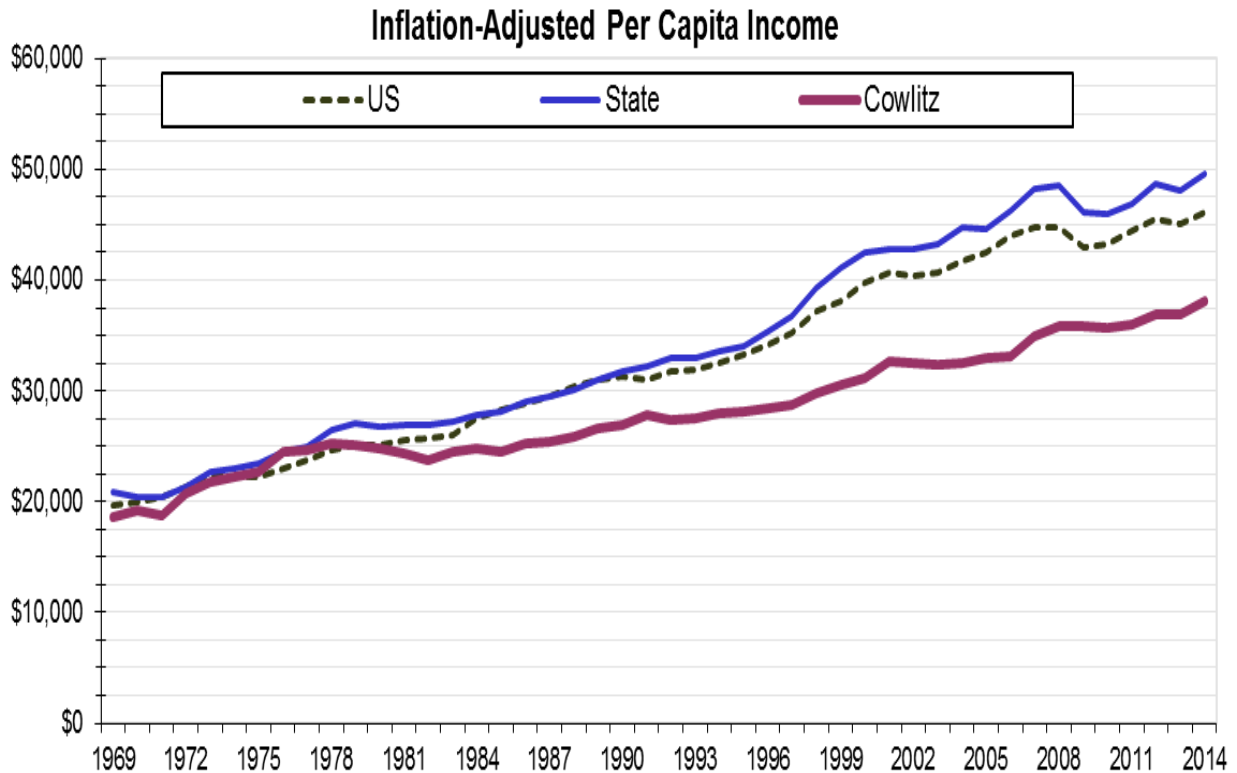


Location of Millennium Bulk Terminals – Longview, LLC. Proposed coal export terminal in Washington State.



Aerial view of Longview, Washington. The area along the waterfront of the Columbia River was zoned industrial when the city was created in the 1920's. The Millennium coal export project is located on a shuttered 1940's era aluminum smelter site. Millennium has spent over \$25 million cleaning up the site. This commitment is in addition to the \$15 million spent to date for permitting the coal terminal over the last 6 years.

Income Information on Cowlitz County Washington



Prior to 1981 Cowlitz County's Per Capita Income was in the top ten of all Washington Counties. With added federal and state environmental regulations such as the spotted owl, our manufacturing sector took a large hit and we have seen a steady decrease in our Per Capita Income when compared to the nation and State of Washington. The gap is increasing and we are lagging behind.

Cowlitz County is a gateway for trade for our state. Limits on the use of our interstate and international transportation systems (rail and the navigation channel) will cause Cowlitz County residents to not fully benefit from the unique location of our county and ultimately cause our residents to fall further behind.