

Testimony of Ross Eisenberg
Before the House Committee on Energy and Commerce
Subcommittee on Energy and Power
Hearing on: “U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to Export”
June 18, 2013

The National Association of Manufacturers (NAM) was founded in 1895 on principles of free trade; these principles continue to be embedded in the NAM’s policies today. The NAM believes free trade and open markets should govern in the context of energy exports, and we oppose bans or similar market-distorting barriers to energy exports. Manufacturers support the President’s National Export Initiative and his goal of doubling U.S. export capacity by 2015.

The strategic advantages the Pacific Northwest presents for trade with Asia have led investors to propose three projects to expand existing port infrastructure to export coal. Although domestic coal demand is waning due to a combination of market forces and stricter regulations, international demand for coal is surging. To meet growing worldwide demand for coal and other exports, a consortium of port operators and coal producers have proposed an expansion of three existing ports in Oregon and Washington. The port expansions will be paid for by private investment, not taxpayers, and built in compliance with strict local, state and federal environmental regulations. These three projects—the Morrow Pacific Project, Millennium Bulk Terminals, and the Gateway Pacific Terminal—hold the promise of over 11,500 jobs for the region, an undeniably large economic boost for areas which, like the rest of the country, continue to fight against high unemployment.

In the case of coal exports, the market is not a barrier. The barriers are entirely regulatory and legal. The three proposed export projects plan to fully comply with all required environmental laws and regulations. They will thoroughly examine air quality, water quality, marine life, wetlands, human health, rail traffic, vessel safety and traffic, endangered species and the dozens of other potential impacts of their projects required by federal, state and local permitting laws. They would like nothing more than to proceed through the permitting process in an orderly fashion, as the law requires. However, “what the law requires” does not appear to be good enough for the groups that oppose these projects. These groups have waged a campaign to block the projects by calling on regulators to broaden the scope of the environmental review to such a degree that the analysis will be so long and so exhaustive that it will delay the projects indefinitely. Specifically, opponents have called for a “cumulative, programmatic” environmental review that includes a broad-ranging analysis of the impacts from all proposed coal export projects in the Pacific Northwest. This “cumulative, programmatic” review would also include a lifecycle environmental analysis of the commodity being transported—in this case, coal.

A “cumulative, programmatic” EIS of this type would be contrary to the law and would create a very dangerous precedent that could be used to block exports. The agencies involved could be laying the foundation for similar exercises for virtually every infrastructure project within the United States that would transport and export cargo of any kind. Similarly, opponents of LNG exports almost certainly would use a bad decision from the Army Corps that expands the scope of the coal export EIS process to then broaden the reviews for LNG export projects to include the upstream environmental impact of hydraulic fracturing.



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of Ross Eisenberg

Vice President

Energy and Resources Policy

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Good morning, Chairman Whitfield, Ranking Member Rush and members of the Subcommittee on Energy and Power. My name is Ross Eisenberg, and I am vice president of energy and resources policy at the National Association of Manufacturers (NAM). The NAM is the nation’s largest industrial trade association, representing nearly 12,000 small, medium and large manufacturers in every industrial sector and in all 50 states. The NAM is also a founding member of the Alliance for Northwest Jobs & Exports (the Alliance), a broad coalition of manufacturers and agricultural, labor, civic and other organizations. The coalition has come together to support new export projects in Oregon and Washington State. I am pleased to represent the views of both the NAM and the Alliance at today’s hearing on U.S. energy abundance and the regulatory, market and legal barriers that stand in the way of energy exports.

The NAM was founded in 1895 on principles of free trade. At the time, the United States was in the midst of a deep recession, and many of the nation’s manufacturers saw a strong need to export their products. This commitment to free trade and open markets continues to be embedded in the NAM’s policies today. Exports have been and continue to be a critical source of growth and

opportunity for manufacturers throughout the United States. The 40 percent increase in goods exports that the United States has enjoyed between 2009 and 2011 has enabled many manufacturers to sustain and, in some cases, even grow employment during very difficult economic times. Export growth is vital not just for businesses that directly export, but for the many suppliers of inputs and services to those businesses throughout every state. Manufacturers support the President's National Export Initiative and his goal of doubling U.S. export capacity by 2015.

The United States has a mix of energy resources and innovative technologies unmatched by any other nation in the world. The United States is the "Saudi Arabia of coal" and has for years relied on its dominant coal reserves for baseload power generation. More than 100 nuclear power plants cleanly and efficiently produce a substantial portion of the nation's electricity. Renewable sources are growing quickly and diversifying the nation's energy portfolio. Advances in energy efficiency continue to cut manufacturers' energy costs. Most recently, technological breakthroughs have made vast domestic deposits of oil and gas cheaply and easily accessible, offshore and onshore.

The United States is, perhaps more than any other nation, energy rich. Therefore, we believe a true "all-of-the-above" energy strategy that embraces all of our nation's energy sources and available technologies—including oil, gas, coal, nuclear, energy efficiency, alternative fuels and renewable energy—can help fuel a manufacturing resurgence in the United States.

The nation's commitment to an "all-of-the-above" energy policy has already borne significant fruit: domestic supplies of fossil fuels greatly exceed projected domestic demand. As a result, producers of these commodities, and the manufacturers that support them, are turning increasingly to global markets. Consistent with our policy, the NAM believes free trade and open markets should govern in the context of energy exports, and we oppose bans or similar market-distorting barriers to energy exports.

Pacific Northwest Exports, Coal Exports and Their Value to Manufacturers

Today, one in four jobs in the Northwest is related to trade. Hundreds of thousands of jobs are supported by the hundreds of billions of dollars in products that pass through Washington and Oregon ports each year. In 2012, Oregon exported more than \$18 billion worth of goods, including electronics, wheat, chemicals, soybeans, civilian aircraft, semiconductors, trucks, road tractors, petroleum products, potatoes and X-ray film.¹ More than half of the state's exports were to Asia. Washington exported twice that much—more than \$36 billion worth of goods, including civilian aircraft, soybeans, wheat, apples, petroleum products, wood, silicon, mink fur skins, petroleum coke, cherries, copper and enriched uranium.² Just under half of Washington's exports were to Asia.

The strategic advantages the Pacific Northwest presents for trade with Asia have led investors to propose three projects to expand existing port

¹ Source: U.S. Census.

² *Id.*

infrastructure to export coal. Although domestic coal demand is waning due to a combination of market forces and stricter regulations, international demand for coal is surging. Within five years, annual global coal demand is expected to grow by approximately 1.3 billion tonnes.³ The bulk of this demand will come from Asia. By 2016, coal-fueled generation of more than 395 gigawatts is expected worldwide. Steel production will grow 20 percent, requiring an additional 200 metric tons per year of metallurgical coal. Seaborne demand is expected to grow at 7 percent compound annual growth rate.

The United States has been exporting coal for years. Over the past two decades, 4–10 percent of the coal produced annually in the United States has been exported. Coal has been exported through ports in more than 20 states, including Virginia, Louisiana, Maryland, Alabama, Washington, Ohio, New York and California. Virtually every region in the country has exported coal, including the Pacific Northwest.

Manufacturing jobs support coal exports in the United States. These jobs include mining and support activities for coal mining; construction; railroad transportation; transport by water and truck; port operations and cargo handling; and all the manufacturing supply chain jobs that support these activities. A study performed by Ernst & Young for the National Mining Association⁴ concluded that in 2011, there were 39,350 people whose employment was directly tied to coal exports. There were also tens of thousands of indirect and induced jobs from

³ Peabody Energy 2012 Annual Report, *available at* <http://www.peabodyenergy.com/mm/files/Investors/Annual-Reports/PE-AR2012.pdf>.

⁴ “U.S. Coal Exports: National and State Economic Contributions,” May 2013, *available at* <http://www.uscoalexports.org/data/National-and-State-Economic-Contributions-5-22-13.pdf>.

coal exports, ranging from retail, wholesale and logistics to hotels and restaurants to the manufacturing supply chain. Overall, the study concluded that coal exports added \$16.5 billion in gross value to the U.S. economy.

Three Proposed Export Expansion Projects

To meet growing worldwide demand for coal and other exports, a consortium of port operators and coal producers have proposed an expansion of three existing ports in Oregon and Washington. The port expansions will be paid for by private investment, not taxpayers, and built in compliance with strict local, state and federal environmental regulations. These three projects are the following:

- The ***Morrow Pacific Project***, which would transport coal from Intermountain states to the Port of Morrow near Boardman, Oregon. From there, it will be transferred to an enclosed storage facility and loaded onto covered barges through an enclosed conveyor. The coal will then be shipped down the Columbia River to Port of St. Helens' Port Westward Industrial Park. From there, enclosed transloaders will transfer the coal onto covered oceangoing Panamax ships. Initially, one four-barge tow per day will move down the Columbia River, shipping 3.5 million metric tons of coal per year to trade allies such as Japan, South Korea and Taiwan. At full capacity, barge tows will increase to two per day, with expected shipment of 8 million metric tons per year.

- **Millennium Bulk Terminals**, a state-of-the-art storage and loading facility in Cowlitz County, Washington. The project would reinvest in an underutilized 416-acre site, upgrade the existing import/export bulk facility and construct a coal receiving, storage and shipping terminal.
- The **Gateway Pacific Terminal**, a deepwater multimodal terminal for the import and export of dry bulk commodities in the Cherry Point industrial area of Whatcom County, Washington. The total site is roughly 1,500 acres, and development would occur on approximately 334 acres. At full operation, the Gateway Pacific Terminal would have the capacity to export and import approximately 54 million metric tons per year of dry bulk commodities, including, but not limited to, coal, grain products, potash and calcined petroleum coke. In a separate project, BNSF Railway Company plans to modify existing rail facilities to accommodate increased rail traffic to the expanded port facility.

The economic impact of the three port expansions, if allowed to move forward, would be significant. The Morrow Pacific Project would create 2,100 direct and indirect jobs and \$126.9 million in wages during construction, and 1,000 direct and indirect jobs and \$67.2 million in wages during operation. The Millennium Bulk Terminals would create 2,650 direct and indirect jobs and \$135 million in wages during construction, and 300 direct and indirect jobs during operation. The Gateway Pacific Terminal would create 3,587–4,429 direct and indirect jobs and \$282.2 million–\$348.7 million in wages during construction, and 867–1,251 direct and indirect jobs and \$91.5 million–\$128.6 million in wages

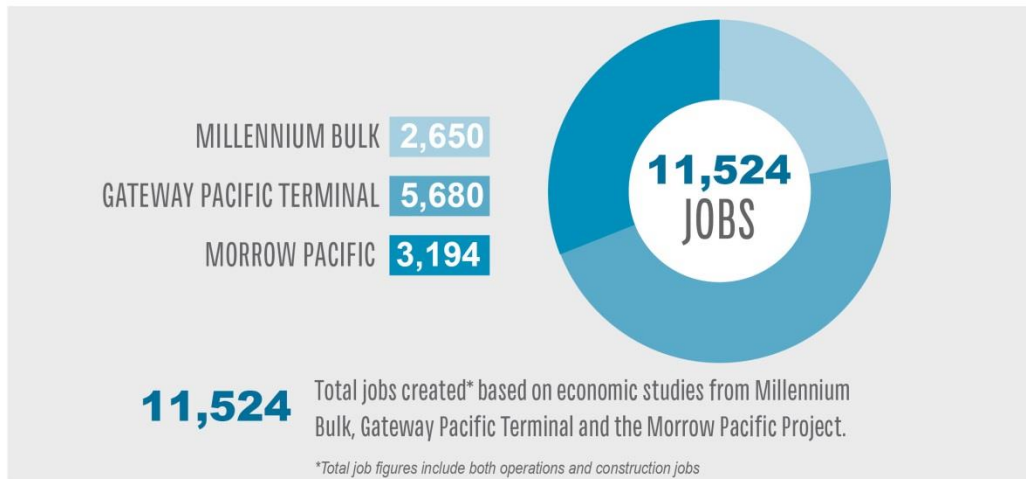
during operation. Altogether, the three projects hold the potential to create 10,504–11,730 jobs and \$727.8 million–\$831.4 million in wages for the region.⁵

The three proposed projects can provide an undeniably large economic boost for the region, which, like the rest of the country, continues to fight against high unemployment. Both Morrow County (7.5 percent to 9.7 percent) and Cowlitz County (9.7 percent) have unemployment rates substantially higher than the national average. These projects would trigger increased activity from a wide range of manufacturing industries, including cement, iron and steel, wood products, aluminum, transportation and shipping.

ALLIANCE FOR
NORTHWEST JOBS & EXPORTS

PROJECTED JOB CREATION

MILLENNIUM BULK, GATEWAY PACIFIC TERMINAL AND MORROW PACIFIC PROJECT



MILLENNIUM BULK	GATEWAY	MORROW PACIFIC
Direct: 1,350 jobs	Direct: 2,545 jobs	Direct: 765 jobs
Indirect & induced: 1,300 jobs	Indirect & induced: 3,135 jobs	Indirect & induced: 2,429 jobs

Source: Alliance for Northwest Jobs & Exports

⁵ Alliance for Northwest Jobs & Exports, <http://createnwjobs.com>.

The Alliance for Northwest Jobs and Exports

The Alliance was formed in 2012 to promote the value of increased exports in the Pacific Northwest, particularly proposals to expand existing port capacity to accommodate coal exports. Since its inception, the Alliance has seen its membership grow substantially; it now includes companies and labor, civic and other organizations that understand the importance of exports to the Pacific Northwest and want to strengthen our trade economy.⁶ More information about the Alliance can be found at <http://createnwjobs.com>.

Regulatory and Legal Barriers to Complete the Projects

In the case of coal exports, the market is not a barrier. The barriers are entirely regulatory and legal. Because these are multimodal projects with a

⁶ The Alliance's diverse membership includes the following: Agrium Inc.; Ambre Energy North America, Inc.; American Council of Engineering Companies of Montana; American Council of Engineering Companies of Washington; Arch Coal; Associated General Contractors of Washington; Associated Industries of Spokane; Association of Washington Business; Billings Chamber of Commerce/Convention and Visitors Bureau; BNSF Railway Company; Brotherhood of Locomotive Engineers and Trainmen, Washington State Legislative Board; Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters; Campbell County Chamber of Commerce; Campbell County Economic Development Corporation; Carpenters Industrial Council; Cloud Peak Energy; Durham & Bates Agencies Inc.; Franklin County Farm Bureau; Greater Spokane Incorporated; Gunderson Marine; Idaho Association of Commerce and Industry; Idaho Chamber Alliance; International Trade Alliance; JH Kelly; J.R. Simplot Company; Lampson International Cranes; Lydig Construction; Monical Engineering; Montana Chamber of Commerce; Montana Coal Council; Montana Contractors' Association; Montana Rail Link, Inc.; National Association of Manufacturers; National Mining Association; Oregon Building Trades Council; Pacific Merchant Shipping Association; Pacific Northwest International Trade Association; Peabody Energy; Pederson Brothers Incorporated; Portland Business Alliance; Portland & Western Railroad, Inc.; Southeastern Montana Development Corporation; SSA Marine; Tidewater; Transportation Communications Union—International Association of Machinists; Union Pacific; United Transportation Union—Montana State Legislative Board; United Transportation Union—Oregon State Legislative Board; United Transportation Union—Washington State Legislative Board; U.S. Chamber of Commerce—Northwest Region; Vigor Industrial; Washington Farm Bureau; Washington Farm Labor Association; Western Business Roundtable; Western Environmental Trade Association; Wyoming Business Alliance; and Wyoming Mining Association.

federal nexus, each project's sponsors must navigate a web of federal and state permitting regulations, including the National Environmental Policy Act (NEPA). That, in and of itself, is a daunting task. However, in this case, the regulatory and legal barriers have become significantly more complex because the commodity being shipped is a fossil fuel, and that fossil fuel is coal.

Both the Millennium Bulk Terminals and Gateway Pacific Terminal will be evaluated through an Environmental Impact Statement (EIS) under NEPA; the Morrow Pacific Project, due to its smaller size, is likely to receive an Environmental Assessment (EA). There is no statutory time limit, which means the environmental review process can drag on as long as agencies allow. Often, as in the case of the Keystone XL pipeline, it can drag on for many years. The only known quantitative analysis of the time required for agencies to complete an EIS—a December 2008 study by Piet and Carole A. deWitt—found that the average time for all federal entities to prepare an EIS was 3.4 years.⁷ During the deWitt's study period, the average time to complete an EIS increased by 37 days each year.⁸ This does not include any lawsuits for which the general six-year statute of limitations applies—meaning that even if a project does get approved, opponents can wait until the last possible minute before construction to file a lawsuit and halt the process.

The three proposed export projects plan to fully comply with all required environmental laws and regulations. They will thoroughly examine air quality, water quality, marine life, wetlands, human health, rail traffic, vessel safety and

⁷ Piet deWitt and Carole A. deWitt, "How Long Does It Take to Prepare an Environmental Impact Statement?" *Environmental Practice* 10 (4), December 2008.

⁸ *Id.*

traffic, endangered species and the dozens of other potential impacts of their projects required by federal, state and local permitting laws. They would like nothing more than to proceed through the permitting process in an orderly fashion, as the law requires. However, “what the law requires” does not appear to be good enough for the groups that oppose these projects. These groups have waged a campaign to block the projects by calling on regulators to broaden the scope of the environmental review to such a degree that the analysis will be so long and so exhaustive that it will delay the projects indefinitely.

When NEPA was originally enacted in 1969, the intent was to require federal agencies to account for, document and disseminate to the public the environmental impacts of their actions. Congress’s intent in enacting NEPA was not to curtail or significantly delay federal action. Yet, that is precisely what opponents of these projects are trying to accomplish through their advocacy on NEPA. Rather than allowing the traditional, project/action-specific EIS process called for by the statute and prevailing case law, opponents have instead called for a “cumulative, programmatic” environmental review that includes a broad-ranging analysis of the impacts from all proposed coal export projects in the Pacific Northwest. This “cumulative, programmatic” review would also include a lifecycle environmental analysis of the commodity being transported—in this case, coal.

Proponents of a “cumulative, programmatic” EIS likely hope to suffocate each project with years of studies until the project’s sponsors become frustrated with continued delays and walk away. To do so would directly violate the

regulations implementing NEPA, which clearly state that “NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.”⁹ Federal courts have held that “[a] programmatic statement is appropriate only where the proposal itself is regional or systemic in scope, or where the proposal is one of a series of interrelated proposals that will produce cumulative, system-wide effects that can be meaningfully evaluated together.”¹⁰ Neither is the case here.

Similarly, expanding the focus of each review to include the cradle-to-grave environmental impact of the cargo is not permitted by existing law. NEPA requires a “reasonably close, causal relationship” for an impact to be relevant.¹¹ The Fourth Circuit recently held that the scope of an EIS should be limited to “the impacts of the specific activity requiring a [Corps] permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant federal review.”¹² In the case of the three proposed projects, this clearly does not extend to coal mining, which has already been evaluated and subjected to a variety of environmental permits and NEPA reviews through the relevant federal land management agencies, or the consumption of coal overseas.

More troubling, a cradle-to-grave, lifecycle impact analysis that includes the environmental impact of the cargo and all similar cargo transported through the region would create a very dangerous precedent that could be used to block

⁹ 40 C.F.R. § 1500.1(c).

¹⁰ *Izaak Walton League of America v. Marsh*, 655 F.2d 346, 374 (D.C. Cir. 1981).

¹¹ *U.S. Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004).

¹² *Ohio Valley Environmental Coalition v. Aracoma Coal Co.*, 556 F.3d 177 (4th Cir. 2009).

exports. The agencies involved could be laying the foundation for similar exercises for virtually every infrastructure project within the United States that would transport and export cargo of any kind. What if the cargo was another fuel or a bulk agriculture product like wheat, corn or soybeans? Would the government need to perform a programmatic EIS to determine the lifecycle environmental impact of that cargo? In the case of corn, would the EIS have to look at the environmental impact related not only to the transportation of the products, but also the planting, cultivating, growing and harvesting of crops? Would agencies be required to take into account the impact of processing these crops and the impact that its workers had on the environment as they traveled to and from work? What if the cargo were cars, tractors, electronics, toys, steel, chemicals, pumps, air conditioners, elevators or airplanes? How far up and down the supply chain would agencies be required to go to assess the impact? The possibilities are endless and are deeply troubling to manufacturers.

The notion that bad precedent here could cascade to other types of exports is far from fiction. In fact, opponents of exporting liquefied natural gas (LNG) have already tried a similar tactic. The Federal Energy Regulatory Commission (FERC) was urged recently to consider the upstream implications of natural gas development (e.g., hydraulic fracturing) when permitting LNG terminals and related pipeline infrastructure in Maryland and Oregon. FERC concluded that upstream natural gas development is not a reasonably foreseeable impact of the construction of an export terminal or related pipeline infrastructure, a finding consistent with NEPA, which requires a “reasonably

close, causal relationship” for an impact to be relevant.¹³ In the context of NEPA, coal and LNG exports are inextricably intertwined: opponents of LNG exports almost certainly would use a bad decision from the Army Corps that expands the scope of the coal export EIS process to broaden the reviews for those projects to include the environmental impact of hydraulic fracturing.

Conclusion

There is a fundamental belief embedded in our nation’s environmental laws that the environment and the economy can coexist; that we can depend on our laws and the agencies obligated to carry them out to identify what we have to do to minimize a project’s impact on the environment and then move forward and build. That is all we are asking for on coal exports.

Energy exports from the Pacific Northwest could provide a major economic boost to a region of the country that desperately needs it and could bring the Administration closer to its goal of doubling exports by 2015. The NAM, on its own and on behalf of the Alliance, strongly supports a project/action-specific environmental review for each individual coal export terminal proposal, in keeping with NEPA’s goal of “straightforward and concise reviews and documentation that are proportionate to potential impacts.”¹⁴

¹³ *U.S. Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004).

¹⁴ Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies, “Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act,” March 6, 2012.