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Mary Abrams
Director, Oregon Department of State Lands
Oregon Department of State Lands
775 Summer St. N.E., Ste 100
Salem, Oregon 97301-1279

Bill Ryan
Assistant Director, Wetlands & Waterways
Oregon Department of State Lands
775 Summer St. N.E., Ste 100
Salem, Oregon 97301-1279

WWC Comments
c/o Mike McCabe, Resource Coordinator
Oregon Department of State Lands
775 Summer St. N.E., Ste 100
Salem, Oregon 97301-1279
mike.mccabe@dsl.state.or.us

Submitted via U.S. mail and email.

RE: Comments on Cascade Kelly Holdings LLC's Removal-Fill Permit Application (Project Application Number APP0054129).

Dear Director Abrams, Mr. Ryan, and Mr. McCabe,

Columbia Riverkeeper (Riverkeeper), the Northwest Environmental Defense Center (NEDC), and the Sierra Club request that the Oregon Department of State Lands (DSL) deny Cascade Kelly Holdings LLC's (Cascade Kelly)¹ application for a removal-fill permit to facilitate crude oil shipments at Port Westward (Project Application No. APP0054129).

¹ Cascade Kelly Holdings LLC is wholly owned by Global Partners LP, a company specializing in transporting crude oil and other petroleum products. Global Partners LP Website, <http://www.globalp.com/news/article.cfm?articleID=278> (last accessed 7/11/2013).

The fundamental question is whether the State of Oregon should become a middleman for moving millions of gallons of dirty and dangerous crude oil through our communities and over the Columbia River. Using the language from DSL's regulations, the question is whether oil export is consistent with the "best use" of Oregon's water resources. ORS 196.825(1); OAR 141-085-0565(3). We request that you seriously consider this question and explain the answer to the public before making a decision on this permit application.

Cascade Kelly's proposal calls for overhauling the existing Port Westward dock to facilitate Cascade Kelly's crude oil export operations and lays the groundwork for major expansions to the company's current operations. Cascade Kelly began shipping crude oil at the Port Westward ethanol facility in November 2012. These over-water operations have never been reviewed by DSL, the U.S. Army Corps of Engineers, the National Marine Fisheries Service, or the U.S. Fish and Wildlife Service. For the reasons explained below, Cascade Kelly's proposed in- and over-water activities threaten the public's use of the Columbia River and endangered salmon and other species. We therefore urge DSL to reject the inevitable impacts and severe risks associated with this project.

DSL has the responsibility and authority to protect the Columbia River Estuary from this proposed project and others like it. The Lower Columbia River is a federally-designated Estuary of National Significance under the Clean Water Act's National Estuary Program, and the Columbia River was designated in 2006 as one of EPA's seven Priority Large Aquatic Ecosystems. The Columbia is an Oregon treasure, and a national priority for watershed health. The Columbia River Estuary faces numerous threats, but none with the potential to quickly and comprehensively devastate this ecosystem like a crude oil spill.

DSL's permit review is undermined by Cascade Kelly's failure to provide a complete, accurate application for its crude oil project. Oregon law requires accurate information in removal-fill applications. Yet Cascade Kelly's application hides the ball; the application fails to disclose that overhauling the dock facilitates Oregon's first crude oil export terminal. Instead, Cascade Kelly states that the overhaul is for "Bulk Liquid Commodities." Is Cascade Kelly handling milk? Water? Cyanide? Tar Sands crude oil? If Cascade Kelly intends to ship crude oil, it should say so. If it intends to ship other products too, these should be listed and part of the permit review. DSL's ability to evaluate the application depends on an accurate representation by Cascade Kelly of the intended use of the dock, and the products it will handle.

In addition to violating Oregon law, Cascade Kelly's hide-the-ball approach undermines the agency's—and the public's—ability to review and comment on the project. In Washington State, coal export speculator Ambre Energy misrepresented the true scope of its coal export project to state regulators, and got caught.² This type of behavior from energy speculators is unacceptable and cannot be tolerated by state agencies. Accurate information is the starting point for the agency's permit review process, and DSL lacks accurate information for Cascade Kelly's proposal. DSL should therefore deny Cascade Kelly's application.

² See http://tdn.com/news/local/group-claims-millennium-misrepresented-scope-of-coal-project/article_e892c86a-393b-11e0-ba50-001cc4c002e0.html (last viewed 7/16/2013).

Crude Oil Handling at Port Westward

According to reports, the terminal is the first large-scale crude oil terminal to operate in Oregon or Washington in decades.³ Cascade Kelly acquired the existing Port Westward ethanol refinery, which includes a bulk liquid trans-loading facility capable of handling crude oil, thereby largely circumventing government oversight and public involvement. Cascade Kelly's terminal can handle a staggering 28,600 barrels of oil per day.⁴

DSL's review of Cascade Kelly's removal-fill application will set an important precedent for how the agency reviews future proposals that would enable crude oil shipments in the lower Columbia—and such proposals are coming. In the late 2000s, advances in technology led to an oil rush in the Bakken shale formation in the North Dakota/Montana/Saskatchewan/Manitoba region. The Bakken Formation produces “light sweet crude oil.” The rapid growth in crude oil production put pressure on pipeline capacity and pushed oil companies to start using rail to move crude to market. In turn, Cascade Kelly's application is likely the first of many that will threaten Oregon's waterways with crude oil.⁵

The Port of Vancouver, Washington, is currently evaluating a controversial crude export terminal proposed by Tesoro at Terminal 5 on the Columbia River. Increased oil tanker and rail traffic raises public safety, environmental, and economic concerns.⁶ For these reasons, we urge DSL to evaluate carefully Cascade Kelly's application, which will facilitate and expand crude oil exports over the Columbia River.

Specific Comments

I. DSL must consider the impacts and risks of crude oil shipment and trans-loading.

DSL should consider the impacts and risks of large-scale crude oil trans-loading and shipping in the Columbia, which Cascade Kelly's application would facilitate. Limiting the analysis to physical alterations of the dock, as Cascade Kelly's application does, is inconsistent with Oregon law. Specifically, Oregon's Removal-Fill Law requires DSL to analyze whether “the project” (not merely the “fill or removal” activity) meets the permitting requirements in ORS 196.825 and OAR 141-085-0565. *See* ORS 196.825(1). DSL's implementing rules define “project” as “the primary development or use . . . proposed by one person.” OAR 141-085-0510(72). A “project” is necessarily broader than just the fill or removal that facilitate it, as evidenced by the Oregon Legislature's 2007 amendments to ORS 196.825(1), which required DSL to expand the scope of the removal-fill permit analysis. *See* Or. Laws 2007, ch 849, §§ 19,

³ http://www.oregonlive.com/environment/index.ssf/2013/05/former_ethanol_plant_in_clatsk.html

⁴ Exhibit I. Sightline Institute, *The Northwest's Pipeline on Rails* at 4 (June 2013).

⁵ Oil from Cascade Kelly's operations is currently bound for U.S. oil refineries. The future of the U.S. ban on overseas export of U.S. derived oil is uncertain. Footnote 4, *supra*. Additionally, it is not clear that all Bakken crude reaching the terminal is subject to that ban because some of it may originate in Canada.

⁶ <http://earthfix.opb.org/water/article/how-to-clean-up-a-crude-oil-spill-from-trains/>;
http://www.oregonlive.com/environment/index.ssf/2012/12/trains_carrying_more_oil_acros.html.

21; see also *Examilotis v. Dept. of State Lands*, 239 Or. App 522, 528, 244 P.3d 880 (2010) (discussing amendments to ORS chapter 196). Because the “primary development or use” of the dock will be crude oil shipping and trans-loading, DSL must analyze the impacts of those activities.

II. DSL should deny Cascade Kelly’s application because it does not provide complete or accurate information about the crude oil trans-loading project.

DSL should deny Cascade Kelly’s application because the application does not provide DSL with enough information to do its job. In DSL’s removal-fill permitting process, applicants have the burden of providing “complete and accurate” information of “sufficient detail” to allow DSL to make informed decisions. OAR 141-085-0550(2), (4). Specifically, OAR 141-085-0550(2) states that “[f]ailure to provide complete and accurate information in the application may be grounds for administrative closure of the application file or denial, suspension or revocation of the authorization.” As explained below, Cascade Kelly’s application obscures, understates, and misstates the true nature of the project: crude oil trans-loading and shipping. The information in Cascade Kelly’s application is therefore neither “accurate” nor “complete” and sufficiently detailed, and DSL should deny Cascade Kelly’s application. OAR 141-085-0550(2), (4).

First, Cascade Kelly’s application contains conflicting and vague information about the project’s basic function. Cascade Kelly never gives a straight-forward answer to the fundamental question: what will happen as a result of the dock modifications? The application’s *most* detailed description of the project’s basic function could be fairly summarized as ‘loading bulk liquid commodities onto Panamax class vessels.’ Application at 3. However, the Biological Assessment (Exhibit 17 to the Application) asserts that the dock alterations would “allow the existing ethanol loading dock to be operated more safely and efficiently,” and accommodate Panamax ships. Global Partners’ website describes the operation at the Port Westward dock as a “crude oil” terminal.⁷ These conflicting descriptions of the project do not amount to the required “complete and accurate information,” and DSL should therefore deny the application. OAR 141-085-0550(2).

Second, Cascade Kelly’s use of the ambiguous term “Bulk Liquid Commodity” to describe its product renders the application void for lack of detail. DSL’s regulations require “complete” information, the level of detail varying with the adverse impacts, public interest, and complexity of the project. OAR 141-085-0550(2), (4). “Bulk liquid commodity” is a meaningless term. Riverkeeper, NEDC, the Sierra Club, and local residents deserve to know whether the “bulk liquid commodity” traveling over state-owned waterways is milk from a Wisconsin dairy or Tar Sands crude oil from Alberta. Local first responders and emergency personnel need to know whether they will be dealing with ethanol, light crude, Tar Sands heavy crude, or something else. Until Cascade Kelly explains what type of ‘bulk liquid commodities’ will shipped over the Columbia River, the application is incomplete and should be denied. OAR 141-085-0550(2).

⁷ Global Partners LP Website, <http://www.globalp.com/terminals/terminal.cfm?terminalID=4000> (last accessed 7/11/2013).

Third, Cascade Kelly's application lacks basic information about the project's size, design, and scope, as required by OAR 141-085-0550(2) which mandates that applications include complete and accurate information. The application fails to disclose the quantity of 'bulk liquid commodity' Cascade Kelly intends to handle, the number or frequency of Panamax ships using the dock, how 'bulk commodity loading' would proceed at the dock, or the number or frequency of unit trains hauling 'bulk liquid commodity' to the dock. It is entirely unclear how DSL can reach any statutory determinations, including the public need analysis and determinations about impacts to state waters, without this fundamental information. OAR 141-085-0550(2).

Finally, apart from the physical impacts of renovating the dock structure, Cascade Kelly's application provides no information about the environmental and human health impacts of the project—which are likely to include crude oil trans-loading and shipment. In the section of the application titled "Project Impacts and Alternatives," Cascade Kelly only addresses the impacts caused by dock construction and the dock itself. This directly violates the requirement that the application identify the "adverse impacts that will result from the project." OAR 141-085-0550(5)(i). The application completely ignores the potentially severe impacts of 'bulk liquid commodity' trans-loading and shipping such as crude oil leaks and spills into the Columbia, toxic air pollution from diesel train and ship engines, toxic air pollution associated with vented emissions off of the crude oil itself, and the risk of catastrophes like the recent explosion and fire in Quebec.⁸ Failing to disclose and discuss even these obvious impacts renders Cascade Kelly's application void for want of "complete and accurate information" about the project. OAR 141-085-0550(2); *see also* OAR 141-085-0550(5)(i).

These deficiencies in Cascade Kelly's application leave DSL without enough information to do its job. DSL's task is to determine whether Cascade Kelly's proposed project is "consistent with the protection, conservation, and best use" of Oregon's water resources and whether the project would interfere with Oregon's paramount policy of preserving its waters for navigation, fishing, and public recreation. ORS 196.825(1). Without even the most basic information about Cascade Kelly's future activities—which will likely include crude oil trans-loading and shipping activities—DSL is in no position to protect Oregon's waters, or decide whether the project should move forward. Because Cascade Kelly has not met its burden to come forward with sufficient information, DSL should deny the application. OAR 141-085-0550(2).

III. DSL should deny Cascade Kelly's application because the crude oil trans-loading project would have unacceptable impacts on the Columbia and Oregonians who use the river.

Cascade Kelly's project is not "consistent with the protection, conservation, and best use" of Oregon's water resources and it would substantially interfere with Oregon's paramount policy

⁸ Washington Post, *40 still missing in deadly Canada oil train derailment; police say higher death toll certain* (July 8, 2013) (http://www.washingtonpost.com/world/the_americas/40-still-missing-in-deadly-canada-train-derailment-police-say-higher-death-toll-inevitable/2013/07/07/56961b80-e76a-11e2-818e-aa29e855f3ab_story.html).

of preserving its waters for navigation, fishing, and public recreation. ORS 196.825(1); OAR 141-085-0565(3).

A. The Project increases the risk of crude oil spills at the dock and in the Columbia River Estuary.

Cascade Kelly’s proposal to overhaul the Port Westward dock to facilitate loading and transporting crude oil is not “consistent with the protection, conservation, and best use” of the Columbia River. ORS 196.825(1); OAR 141-085-0565(3). As an initial matter, Cascade Kelly’s application fails to address the risk and impacts of a crude oil spill at the dock during crude oil loading.⁹ Where is the risk analysis? Where is the discussion of environmental and socio-economic impacts from a large crude oil spill in the fragile and ecologically rich Columbia River Estuary? Where is the discussion of known navigational dangers that could lead to spills, like crossing the perilous Columbia River Bar? How can such a potentially destructive project be consistent with the “best use” of the Columbia River? ORS 196.825(1). If ‘protection’ and ‘conservation’ mean anything, surely they mean that DSL should not approve a project that could devastate the entire Columbia River Estuary with one mishap.

B. The Project threatens public health and safety.

As the recent tragedy in Lac-Mégantic, Quebec, illustrated, transporting crude oil can be extremely dangerous.¹⁰ First-hand accounts of the Lac-Mégantic tragedy are chilling. Anne-Julie Hallee, a Lac-Mégantic resident, explained her experience: “There was a cloud of flames, rolling and rolling. It was really scary . . .”¹¹ “[I]t was like hell.”¹² Another resident added: “I saw a mushroom cloud, like an atomic bomb, explode in the air.”¹³ Before approving the application DSL needs to explain to Oregonians why such a dangerous project—which could induce a disaster similar to or even worse than the one in Lac-Mégantic—is consistent with the “best use” of the Columbia River? ORS 196.825(1).

DSL must consider whether Cascade Kelly’s crude oil shipping project would “interfere with public health and safety” when determining whether the project is “consistent with the protection, conservation, and best use” of Oregon’s water resources or would interfere with using Oregon’s waters for navigation, fishing, and public recreation. ORS §§ 196.825(1), (3)(e); OAR §§ 141-085-0565(3), (4)(e).

⁹ The Montreal Gazette, *Lac-Mégantic: Months-long cleanup of crude oil lies ahead* (July 12, 2013) (http://www.montrealgazette.com/story_print.html?id=8649196&sponsor) (explaining clean-up effort after oil train explosion in Lac Mégantic, Quebec)

¹⁰ Exhibit 2. National Geographic, *Oil Train Tragedy in Canada Spotlights Rising Crude Transport by Rail* (July 28, 2013); see also The Daily Beast, *Inside the Brutal Clean-up Efforts in Lac-Mégantic* (July 16, 2013) (<http://www.thedailybeast.com/articles/2013/07/16/inside-the-brutal-clean-up-efforts-in-lac-megantic.html>); see also Washington Post, *40 still missing in deadly Canada oil train derailment; police say higher death toll certain* (July 8, 2013) (http://www.washingtonpost.com/world/the_americas/40-still-missing-in-deadly-canada-train-derailment-police-say-higher-death-toll-inevitable/2013/07/07/56961b80-e76a-11e2-818e-aa29e855f3ab_story.html).

¹¹ Exhibit 3. See <http://www.ctvnews.ca/canada/residents-recall-terrifying-moments-in-lac-megantic-train-disaster-1.1357750#ixzz2YW82LsBj>.

¹² *Id.*

¹³ Exhibit 3. See <http://www.rcinet.ca/en/2013/07/08/quebec-town-a-war-zone-after-derailed-train-explosions/>.

First, and most fundamentally, Cascade Kelly's application does not discuss the threats to public health and safety from a crude oil spill and potential fire at a ruptured over-water pipeline or at the point of loading onto a vessel. The proposed dock improvements will facilitate more oil shipment, and therefore increase the probability of a significant spill or other accident during the loading process. As the recent tragedy in Quebec illustrated, spilled crude oil burns and explodes, and is extremely dangerous to workers and residents in the vicinity.¹⁴ The failure to provide any analysis of the human safety risks posed by crude oil loading, and the potential for accidents involving fires or explosions, is a material failure of Cascade Kelly's application. Without such information, DSL has no way of determining that Cascade Kelly's proposed project will not "interfere with public health and safety;" DSL should therefore deny the permit. ORS §§ 196.825(1), (3)(e); OAR §§ 141-085-0565(3), (4)(e).

Similarly, Cascade Kelly's application does not discuss the threats to public health and safety from a crude oil spill and potential fire at a Panamax vessel at the dock or elsewhere in the Columbia River Estuary. The proposed dock improvements would allow immense Panamax tankers to carry crude through the estuary, in close proximity to towns, homes, and commercial and recreational river users. A fire or explosion resulting from a crude oil spill or other accident on board a Panamax tanker could have catastrophic consequences for people nearby. Cascade Kelly's failure to analyze or even acknowledge the human safety risks posed by Panamax tankers carrying crude oil loading invalidates the application. Without such information, DSL has no way of determining that Cascade Kelly's proposed project will not "interfere with public health and safety;" DSL should therefore deny the permit. ORS §§ 196.825(1), (3)(e); OAR §§ 141-085-0565(3), (4)(e).

Cascade Kelly's application omits any mention of human health impacts from the diesel exhaust from immense Panamax vessels, or toxic air emissions from the crude oil itself. Cascade Kelly handles Bakken crude oil at Port Westward. Bakken crude often contains high levels of hydrogen sulfide gas, a colorless, flammable, and toxic gas. Chronic exposure to sulfide gas can cause lung, liver and kidney damage, infertility, immune system suppression, disruption of hormone levels, blood disorders, gene mutations, birth defects, and cancer.¹⁵ According to the Occupational Safety and Health Administration, hydrogen sulfide is immediately dangerous to life and health at concentrations above 100 parts per million (ppm). When mixed with air, hydrogen sulfide is explosive. When the concentration rises over 100 ppm, hydrogen sulfide is odorless because it paralyzes the olfactory nerves. At concentrations as low as 50-200 ppm, hydrogen sulfide can cause shock, convulsions, and coma. Cascade Kelly's application does not mention how emissions of sulfide gas and other potential toxic air pollutants from rail cars, the trans-loading pipeline, or receiving ships will be monitored and regulated to ensure human health and safety. Again, without such documentation, Cascade Kelly's proposed project could very likely "interfere with public health and safety," and should therefore be denied. ORS §§ 196.825(1), (3)(e); OAR §§ 141-085-0565(3), (4)(e).

¹⁴ Exhibit 4. Pictures from aftermath of an oil-train explosion in Lac-Megantic, Quebec.

¹⁵ Utah Department of Environmental Quality, *Adverse Health Effects from Exposure to Crude Oil Mixtures* (June 2010).

Because Cascade Kelly’s proposed project would add an undisclosed number of crude oil tanker-trains to Oregon’s rail system, it is appropriate for DSL to require Cascade Kelly to provide information about the health and safety impacts of crude oil trains. Unit trains of crude oil have the potential to strike vehicles and pedestrians, close intersections delaying emergency response times in small communities, and have catastrophic accidents like the one in Lac-Mégantic that recently killed dozens of people. Again, Cascade Kelly’s application does not even acknowledge these risks. Without such documentation, the proposed project would very likely “interfere with public health and safety,” and should therefore be denied. ORS §§ 196.825(1), (3)(e); OAR §§ 141-085-0565(3), (4)(e).

C. Recreational use of the Columbia River Estuary.

The Columbia River Estuary is an outstanding recreational area, and DSL must carefully assess whether the proposed project’s Panamax vessel traffic would “unreasonably interfere” with the state’s policy of preserving fishing and public recreation on the Columbia River. ORS 196.825(1); OAR 141-085-0565(3). The application claims that the project will decrease shipping traffic from the Port Westward dock by 30 to 50 percent; this may be true for the overall number of vessel trips, but it does not explain the impact of very large Panamax vessels on other river users. The shipping channel in the estuary and near the river mouth is a popular location for salmon and sturgeon fishing, and Cascade Kelly had an obligation to explain why Panamax vessel traffic would not “unreasonably interfere” with fishing and other recreational uses of the river. ORS 196.825(1). Without such documentation in the permit, it appears likely that Cascade Kelly’s project should be denied because it would conflict with Oregon’s policy of preserving fishing and public recreation on the Columbia River. ORS 196.825(1); OAR 141-085-0565(3).

D. Crude oil shipment exacerbates global warming.

Finally, Cascade Kelly’s project is not consistent with the protection, conservation, or best use of Oregon’s water resources based on the project’s global warming impacts and greenhouse gas (GHG) emissions. ORS 196.825(1); OAR 141-085-0565(3). As noted above, Cascade Kelly provides no figures on the amount of crude oil or other carbon-based fuel it plans to ship, so calculating the project’s true contribution of GHG emissions is nearly impossible.

In 2007, the United Nations’ Intergovernmental Panel on Climate Change (“IPCC”) released its frequently cited report reflecting the new scientific consensus that unrestrained GHG emissions are causing global warming. As summarized by the UN in a press release:

The IPCC, which brings together the world’s leading climate scientists and experts, concluded that major advances in climate modeling and the collection and analysis of data now give scientists “very high confidence”—at least a nine out of ten chance of being correct—in their understanding of how human activities are causing the world to warm. This level of confidence is much greater than the IPCC indicated in their last report in 2001. The report confirmed that it is “very likely” that greenhouse gas emissions have caused most of the global

temperature rise observed since the mid-twentieth century. Ice cores, going back 10,000 years, show a dramatic rise in greenhouse gases from the onset of the industrial age. The co-chair of the IPCC working group stated, “There can be no question that the increase in these greenhouse gases are dominated by human activity.

The United Nations went on to summarize the key findings of the report:

The report describes an accelerating transition to a warmer world—an increase of three degrees Celsius is expected this century—marked by more extreme temperatures including heat waves, new wind patterns, worsening drought in some regions, heavier precipitation in others, melting glaciers and arctic ice, and rising global average sea levels.

Scientific analysis since then has demonstrated that the urgency to act on climate impacts is even greater than it was in 2007. The recent Copenhagen Climate Science Congress, attended by 2,000 scientists, concluded with this “Key Message 1:”

Recent observations confirm that, given high rates of observed emissions, the worst-case IPCC scenario trajectories (or even worse) are being realized. For many key parameters, the climate system is already moving beyond the patterns of natural variability within which our society and economy have developed and thrived. These parameters include global mean surface temperatures, sea-level rise, ocean and ice sheet dynamics, ocean acidification, and extreme climatic events. There is a significant risk that many of the trends will accelerate, leading to an increasing risk of abrupt or irreversible climatic shifts.¹⁶

Numerous studies predict severe impact from climate change in Oregon, including dramatic reductions in snowpack, declining river flows, increased deaths from temperatures and air pollution, increased risk of wildfires, loss of salmon and shellfish habitat, lost hydropower generation, and flooding. The Oregon Department of Energy summarizes these impacts, including impacts specific to “the water resources of the state:

Rain and Snow Patterns

Rainstorms and snowstorms could increase in severity, but less snow would build up in the mountains. Snowpacks might melt faster, increasing flooding. Less water would be available for recreation, irrigation, drinking and fish habitat. The concentration of pollutants in the water could increase during summer and fall.

Sea Level Rise

A rise in sea level could threaten beaches, sandy bluffs and coastal wetlands. Coast towns could experience more flooding, causing increased damage to roads, buildings, bridges and water and sewer systems.

¹⁶ International Scientific Congress, *Climate Change: Global Risks, Challenges, and Decisions* (Mar. 12, 2009).

Diminished Water Supplies and Crop Productivity

Oregon's crops and livestock could be affected by warmer temperatures, less water availability and drier soils. Some crops, such as wheat, might thrive in warmer temperatures, while others, such as potatoes, could be harmed. Less water available for irrigation would harm agriculture.

Ecosystems

Native species adapted to Oregon's climate could suffer if temperatures rise. Warmer streams and rivers would harm salmon and other native species and non-native species could replace them. The cultural practices of Oregon's tribes could be affected, as could the businesses and recreation practices of those who rely on the state's native species.

Based on the substantial increase in GHG emissions associated with the crude oil shipped from the Cascade Kelly's project, DSL cannot reach the required statutory determination that the project is consistent with the protection, conservation, or best use of Oregon's water resources. ORS 196.825(1).

E. DSL should not allow Cascade Kelly to do in-water work when endangered salmon and steelhead are rearing or migrating near the dock.

If DSL issues the removal-fill permit, Cascade Kelly should not be allowed to perform any construction work on the dock outside of the in-water work period or 'fish window.' The Columbia River near the dock is rearing or migration habitat for 13 threatened or endangered species of salmon and steelhead. *Biological Assessment* at 4. In-water construction, such as the proposed vibratory- and impact-hammering to drive new dock pilings, could harm juvenile salmon and steelhead migrating or rearing near the dock. *Biological Assessment* at 16. Fortunately, the Oregon Department of Fish and Wildlife (ODFW) has made recommendations for time periods to avoid in-water construction in order to protect threatened and endangered anadromous fish, and other species.¹⁷ DSL cannot ignore the in-water work window.¹⁸ In reference to this project, the ODFW specifically commented to DSL that all "in-water work should occur within the ODFW preferred in-water work window" DSL's Removal-Fill Guide notes that "DSL relies on comments from other state agencies for certain expertise. For example, DSL will rely on comments from ODFW regarding project effects to fish habitat" DSL, *Removal-Fill Guide* at 6-9 (Nov. 2011). Because in-water construction could harm or kill threatened and endangered salmon and steelhead, and because protecting fish is ODFW's area of expertise, DSL should rely on ODFW's advice.

F. This Project could support coal or Tar Sands crude oil export.

Despite Cascade Kelly's protestations that the dock expansion has nothing to do with coal, Riverkeeper remains concerned that this project could be related to or benefit Ambre

¹⁷ ODFW, *Oregon Guidelines for Timing of In-water Work to Protect Fish and Wildlife Resources*, 1 (June, 2008) (http://www.dfw.state.or.us/lands/inwater/Oregon_Guidelines_for_Timing_of_%20InWater_work2008.pdf).

¹⁸ *Id.*

Energy’s proposed coal export terminal. As DSL is well aware, Ambre Energy’s “Morrow Pacific Project” contemplates using the Port Westward dock to transfer coal from river barges to Panamax vessels for overseas export.¹⁹ In fact, **Ambre Energy’s web page has a graphic of a Panamax ship moored at the Port Westward dock, being loaded with coal.**²⁰ Cascade Kelly’s proposed project—which would enable the Port Westward dock to accommodate Panamax vessels—appears to be capable of facilitating coal export as well as crude oil trans-loading. There is no apparent practical reason, based on the very limited information in Cascade Kelly’s application, that the expanded dock could not alternately accommodate Panamax vessels loading coal and crude.

Cascade Kelly’s statements notwithstanding, DSL should be wary of this project’s possible link to coal. Ambre Energy has proven that it is willing to lie to the public and regulatory agencies in order to get approval for coal export projects. For instance, Ambre Energy provided incorrect and misleading information regarding its proposed Millennium coal export facility in Longview, Washington, and attempted to downplay the true nature of its proposal until after the local environmental review process was complete.²¹ Further, the Port of St. Helens (which owns the dock) has contracted with Ambre Energy to find space at the Port for the Morrow Pacific coal trans-loading project,²² giving the Port of St. Helens an incentive to allow Ambre Energy to use its dock for loading coal onto Panamax ships in the future, even if that is not Cascade Kelly’s current intent. There is strong circumstantial evidence that the proposed dock expansions could support coal export. DSL should critically investigate whether expanding the Port Westward dock to accommodate Panamax vessels would ultimately facilitate coal export before issuing any permits for the project.

Relatedly, DSL should critically investigate the possibility that this project will facilitate the transport of Canadian Tar Sands crude oil for international export. While the project appears to be focused on shipping more-valuable Bakken crude, there is no apparent reason why the facility could not accommodate Tar Sands heavy crude in the future. Wider use of Tar Sands oil is currently impeded by transport bottlenecks, including staunch opposition to pipeline construction the U.S. and Canada.²³ Some observers have concluded that “build-out of oil-by-rail projects in the Northwest could, in effect, serve as a pipeline on wheels for Canadian tar sands.”²⁴ Canadian Tar Sands oil poses even more severe environmental and global warming risks than conventional crude.²⁵ As noted above, Cascade Kelly’s failure to disclose whether Tar Sands heavy crude is one of the ‘bulk liquid commodities’ it could ship from the dock invalidates the application. OAR 141-085-0550(2) (requiring applications to contain “complete and accurate information”).

¹⁹ Ambre Energy’s website for the Morrow Pacific Project, (<http://www.morrowpacific.com/the-project>) (last viewed 7/16/2013).

²⁰ Exhibit 5. See <http://morrowpacific.com/wp-content/uploads/2012/08/MorrowPacificMap-large.jpg>.

²¹ See http://tdn.com/news/local/group-claims-millennium-misrepresented-scope-of-coal-project/article_e892c86a-393b-11e0-ba50-001cc4c002e0.html (last viewed 7/16/2013).

²² Exhibit 6. Port of St. Helens - Option and Terminal Services Agreement (Jan. 2012).

²³ Exhibit 1 at 3, 4.

²⁴ *Id.*

²⁵ Exhibit 7. U.S. Environmental Protection Agency, *Comments on the Draft Supplemental Environmental Impact Statement for the Keystone XL Pipeline*, 2, 3 (April 2013).

V. DSL should not rush this important decision.

DSL should not make this important decision immediately or with anything less than a full analysis of the project's true impacts. Several important federal- and state-level reviews and authorizations of the project may be forthcoming in the near future. For instance, the U.S. Army Corps of Engineers may review the project under the National Environmental Policy Act and the Clean Water Act and/or the Rivers and Harbors Act. The National Marine Fisheries Service will consult on the project's impacts to fish and threatened and endangered species under the Endangered Species Act and the Magnuson-Stevens Act. The Oregon Department of Environmental Quality will be promulgating a Clean Water Act Section 401 certification, *Application* at 8, to accompany the Army Corps' decision. Each of these processes will develop details of the proposed project and may place restrictions on the project that will inform DSL's removal-fill permitting decision. DSL has the discretion to obtain all the information "pertinent and necessary to make an informed decision." ORS 196.825(12)(b). Given the insufficiency of Cascade Kelly's application, DSL should at least consider the results of other agencies' reviews before making any permitting decisions.

Conclusion

DSL is on the cusp of making a historic decision about whether to permit expanded crude oil shipment in the Columbia River Estuary. For the Columbia River and its iconic salmon and steelhead runs, Cascade Kelly's project means a significant increase in Panamax vessel traffic, toxic air emissions, and the risk of catastrophic crude oil spills. For the people living along the river, crude oil shipment is a new and potential very dangerous neighbor. Riverkeeper therefore urges DSL deny Cascade Kelly's removal-fill permit or, at least, delay acting on the permit request until DSL can acquire basic information about the project and its potential impacts.

Sincerely,



Miles Johnson
Clean Water Attorney
Columbia Riverkeeper
(541) 272 – 0027
miles@columbiariverkeeper.org



Marla Nelson
Legal Fellow
Northwest Environmental Defense Center
(503) 768 – 6726
msnelson@nedc.org



Devorah Ancel
Attorney
Sierra Club Beyond Oil Campaign

Enclosures:

- Exhibit 1: Sightline Institute, *The Northwest's Pipeline on Rails*.
- Exhibit 2: National Geographic, *Oil Train Tragedy in Canada Spotlights Rising Crude Transport by Rail*.
- Exhibit 3: Collected quotes from residents of Lac-Megantic, Quebec.
- Exhibit 4: Pictures of oil-train explosion in Lac-Megantic, Quebec.
- Exhibit 5: Graphic from Ambre Energy depicting Panamax vessel at Port Westward dock being loaded with coal.
- Exhibit 6: Port of St. Helens - Option and Terminal Services Agreement.
- Exhibit 7: EPA. *Comments on the Draft Supplemental Environmental Impact Statement for the Keystone XL Pipeline*.

cc:

Richard Whitman, Natural Resource Policy Director, Office of the Governor

Paul Lumley, Executive Director, Columbia River Inter-Tribal Fish Commission
Mike Turaski, Section Chief, Regulatory Branch, U.S. Army Corps of Engineers
Ben Meyer, Habitat Conservation Division, National Marine Fisheries Service
Nina DeConcini, Northwest Region Administrator, Oregon Dept. of Environmental Quality