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ENVIRONMENTAL JUSTICE COMPLAINT

Referencing the following statutes and documents:

EXECUTIVE ORDER 12898, "FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS," ISSUED BY PRESIDENT CLINTON ON FEBRUARY 11, 1994.

PRESIDENT CLINTON'S FEBRUARY 11, 1994 "MEMORANDUM ON ENVIRONMENTAL JUSTICE."

"FINAL GUIDANCE FOR INCORPORATING ENVIRONMENTAL JUSTICE CONCERNS IN EPA'S NEPA COMPLIANCE ANALYSES APRIL 1998."

01-20-2004 04:39PM LAZERQUICK #620 P.02

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED.
(42 U.S.C. §§ 2000D TO 2000D-7).

Subject project described in:
Final Integrated Feasibility Report for Channel Improvements and Environmental Impact Statement – Columbia and Lower Willamette River Federal Navigation Channel (referred to hereafter as the FEIS)

Lead Agency: The U.S. Army Corps of Engineers (the Corps)

Cooperating Agency: The U.S. Environmental Protection Agency (EPA)

State Agencies with delegated federal authority, certification authority, or review authority regarding issuance of permits: Oregon Department of Environmental Quality (ODEQ), Oregon Department of Land Conservation and Development (DLCD), Washington Department of Ecology (Ecology).

Permits and activities related to this complaint: (1) Designation of ocean disposal sites under Sections 102 and 103 of the Marine Protection, Research and Sanctuaries Act (This includes the Corps' temporary site designations, as well as long-term designations by the EPA). (2) Clean Water Act Section 404 Permit for the North Jetty disposal site, including Oregon and Washington State Water Quality Certification under CWA Section 401, performed by ODEQ and Ecology. (3) Clean Water Act Section 404 permits for discharge of dredged materials in the Columbia and Willamette Rivers, including the related Section 401 Water Quality Certification processes in Oregon and Washington (ODEQ and Ecology). (4) Removal permits issued by DLCD and fill permits issued by DLCD or Ecology.

Most of these permits and activities are described in the FEIS.

Representation: We make this complaint as executive directors of the Columbia Deepening Opposition Group (CDOG) and Salmon For All, and at the request of and on behalf of members of low-income, minority and Native American populations within CDOG, Salmon For All, and the regional economic communities who reside in the areas adversely effected by this project.

Demographics: The disproportionately affected populations in Clatsop County, Oregon, and in Pacific and Whakiakum Counties in Washington would suffer environmental injustices as a result of this project. These are the three counties that border the Columbia River Estuary. The FEIS states in Volume 1, Main Report and Exhibits, page 5-34, Section 5.4.1: *"The 1995 population of Clatsop County was 34,300 with only slight growth since 1980. The key manufacturing sectors are wood, paper, and food products (mainly fish processing.) Per capita income has been and continues to remain below Oregon and United States levels. Whakiakum and Pacific Counties are similar to*

01-20-2004 04:40PM LAZERQUICK #620

Clatsop County in having relatively small populations and resource based manufacturing sectors." As the Corps of Engineers indicates, these are generally low-income rural counties. Many of the low-income individuals are elderly; still more are children. Some residents are Native Americans, including members of the Chinook Tribe and other tribal groups. About 200 members of the federally recognized Shoalwater Tribe live near Tokeland, Washington, in Pacific County. There is also a sizable population of seasonal farm-workers, primarily Latin American, who work with the cranberry and sardine harvest. This demographic is by no means exhaustive, nor do we mean to imply that low-income and minority populations in other parts of project extant would not suffer adverse effects. We are only pointing out the obvious existence of people that need consideration under the principals of environmental justice. And times have gotten worse.

Adverse effects: According to the EPA, the entire length of this project on the Columbia River is subject to fish advisories for DDT, PCBs, and dioxin. The Willamette River section has advisories for mercury. The Portland Harbor section of the Willamette is so heavily laden with toxic contamination in its sediments that the EPA is considering a Superfund listing.

Figures from the EPA (as compiled by USPIRG) show that the Columbia River received over 1 million pounds of carcinogenic discharge from 1992-1996, to lead the Nation's water-bodies with this dubious distinction. During the same period, Longview, Washington (midway along the 100-mile-plus project path) was listed as the top point source of cancer causing chemicals dumped into U.S. waters. (See: http://www.pirg.org/enviro/toxics/waters98/index.htm)

The evidence is clear that toxic contamination exists in the sediments of the Columbia and Willamette Rivers. One question, for the purposes of an environmental justice investigation, is whether dredging and blasting and dumping of these sediments would redistribute dangerous materials and increase their bio-availability in the estuary. If bio-availability is increased, bio-accumulation and bio-magnification follow. Benthic biota and small organisms gather toxins to pass to fish, wildlife, and humans up the food chain. People who eat food from the river on a subsistence basis (including many members of our organizations) and folks that tend to eat more seafood due to cultural traditions, would suffer increased incidences of the health problems stemming from an increased bio-availability of toxins in the estuary food fish habitat.

Therefore, the public health impacts to downstream estuary communities, and to those who live near the coast on either side of the mouth of the Columbia River, are extreme. Impacts to aquatic resources that are economically important would also impact low-income and minority populations in this area (Clatsop, Pacific, and Whakiakum Counties). The Corps of Engineers acknowledges some of the adverse impacts that use of the new ocean disposal sites would have on Dungeness crab, flatfish, and other species as yet undisclosed, yet refuses to mitigate for this damage. Nor is any mitigation

whatsoever provided for loss of every kind of aquatic resource in the Columbia River Estuary. This digs hard into the natural resource based economies of the estuary communities.

Rockfish, crab, salmon, sturgeon, and other harvested marine life are vital to the economic health of the affected counties. Furthermore, listed endangered species are also important economically, because their decline results in harvest period restrictions on viable species in order to protect those that are listed. Poor communities are forced to take another blow to support the greater economic returns of the vested interests in the channel deepening project of the Lower Columbia.

Salmon specifically, endangered and not, would experience radical hardship if this project were allowed. The Northwest Fisheries Science Center of the National Marine Fisheries Service points out in a December 2, 1999 memorandum: *"Redistribution of contaminants from upriver contaminated dredge sites to shallow water, low flow sites represents a potential for bio-accumulation of toxin by out-migrating juvenile salmon that utilize these habitats. Dredging operations in the Columbia and Willamette rivers will likely result in resuspension and redistribution of bottom sediments in the dredge area... Dredging operations would be expected to increase concentrations of these substances in the water column, as well as redistribute contaminants from upriver contaminated dredge sites to shallow water, low flow sites on the lower river, which are important habitat for juvenile salmon... Exposure to contaminants found in Columbia and Willamette River sediments, particularly to PAHs and PCBs, can affect the health of threatened or endangered salmon that utilize the LCR. Short-term exposure to PAHs and PCBs in contaminated estuaries, both through diet and through the water column, reduces disease resistance and growth rates of out-migrating juvenile Chinook salmon... Resuspension of these contaminants as a result of dredging would increase the risk of exposure through the water column or through contaminated prey. Reduced growth and increased disease resistance reduce survival potential."*

Redistribution of contaminated sediments is only one of myriad of dangers to salmon from this project, but it's especially apt as an example for this environmental justice complaint. It demonstrates that toxins would be moved downstream while being made more available to life within the river. Salmon would suffer; those who fish would suffer; economies largely dependent on the fishing industry would suffer; and the health of low-income and minority populations would be endangered.

Salmon harvest in particular begins with commercial fishermen drawn from these economically marginalized communities. The second tier disposal sites on mainstem commercial salmon fishing grounds would eliminate the viability of those inter-jurisdictional resources permanently for citizens of both Washington and Oregon. Additional harm to regional fisheries infrastructure would accrue with the loss to the Clatsop County Select Areas Fishery program that has recently expanded into a joint state fisheries program.

For this Select Area program in particular, we have recently noticed slight hints of reduced state and federal agency cooperation to procure federal assistance funds. Curiously, we just lost a, previously available, supply of coho eggs for the program. This is somewhat intimidating, but so far falls short of any genuine retaliatory effort against economic opposition to an urban project from the rural counties. We hope that we are not witnessing the beginning of a trend. Obviously, any harm to a commercial fishing harvest will immediately harm fishermen financially, and this inevitably harms their families and their community structure. As an example, the commercial Dungeness crab fishery has two distinct fisheries, the tribal commercial harvest and the regional, multi-state commercial harvest. Our fisheries support many cultural communities and diverse economic opportunities.

Environmental Justice and the FEIS: The U.S. Army Corps of Engineers examined the possibility of environmental justice concerns regarding this project. The sum of their analysis is found in the Main Volume, page 7-9, section 7.4.18: Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, 11 February 1994 *"The overall intention of the order is to avoid disproportionately high imposition of any adverse environmental or economic impacts on minority or low-income populations. All NEPA environmental analyzes must include an evaluation of effects on minority and low-income communities. No identified minority or low-income populations would be adversely affected by the proposed project."*

The Corps erred in drawing this conclusion. We assert the EPA Offices of Civil Rights and Environmental Justice are now obliged to attempt to rectify this mistake.

Actions Demanded by this Complaint: The EPA Office of Civil Rights (OCR) is likely to contend that the Corps and the EPA are not subject to the Civil Rights Act. Further the OCR might choose to consider the President's Executive Order (EO) 12898 unenforceable. We ask that the intent of the Civil Rights Act and the EO be followed by these Federal agencies. We also ask that the procedures mandated by the EO and further clarified by the "Memorandum on Environmental Justice," the Council on Environmental Quality NEPA Guidelines, and EPA's own Environmental Justice Guidelines be properly followed.

Is it too late to bring the Federal agencies into compliance for this project? We do not know for sure. Nevertheless, we fell that EPA clearly has the obligation to make the attempt to adhere to the principals of nondiscrimination and environmental justice. We feel it is reasonable to expect agencies to adhere to their own guidelines.

The project described in the FEIS would most certainly have the effect of discrimination. The environmental justice issues, as we have demonstrated, are substantial. They should have been addressed in the development of the environmental impact statement. Because of this negligence, we must persist in raising awareness of environmental justice during the permitting process. All agencies and government entities involved in any aspect of

the permitting process for this project must comply with the principals of environmental justice, even though the Corps and the EPA overlooked this very important subject during the National Environmental Policy Act process.

We will object to the state issued permits until full attention is committed to environmental justice and non-discrimination. We hope your investigation also serves as an advisory to parties involved in seeking and issuing future permits for this project; as this policy issue might be activated by the EPA when each permit might be issued.

Furthermore, we request that the EPA become actively involved in assisting state and local governments and agencies as they process permit-related requests. Channel Deepening is a huge Federal project involving two states, several port districts, multiple agencies and governments. *Each entity is responsible to make certain that non-discrimination and environmental justice principles are followed.* The EPA, as the cooperating Federal agency, should take the lead in developing a "Disparate Impact Analysis." This would include identifying the affected populations, their demographics, the universe of facilities, and the significance of the disparity. Aspects of mitigation and justification can then be explored.

Carol Browner, the Administrator of EPA, said: *"For too long, minority communities and low-income communities have borne a disproportionate burden of modern industrial life..."* This project exemplifies the imposition of that burden. The current lack of consideration for low-income and minority populations has been extreme. In all the years of planning, for example, neither the EPA nor the Corps has held even one public meeting in Pacific County. We make this complaint in good faith and in the spirit of participating in the democratic process.

Respectfully submitted,

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