

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
FOR THE
DEPARTMENT OF STATE LANDS

IN THE MATTER OF)
)
COYOTE ISLAND TERMINAL, LLC,) OAH Case No.: _____
)
Permittee.) Agency Case No. APP 0049123-RF
)
)
_____)

PETITION TO PARTICIPATE AS A PARTY

Columbia Riverkeeper, Friends of the Columbia Gorge, and Sierra Club (hereinafter “Riverkeeper” or “petitioners”) hereby timely apply to participate as full parties in the above matter, pursuant to OAR 137-003-0535, or in the alternative, OAR 141-085-0575(4)(c).

INFORMATION REQUIRED BY ORS 196.835 AND OAR 137-003-0535.

(a) Name and Address of Petitioners

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(b) Name and Address of Petitioners' Counsel

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(c) Statement of Level of Participation

Riverkeeper petitions to participate as a full party in this matter.

(d) Statement of Personal Interest

Columbia Riverkeeper, Friends of the Columbia Gorge, and Sierra Club are all membership organizations dedicated to protecting the natural environment, public health, and environmental quality. The groups seek to participate to protect their organizational interests and members' interests as follows:

Columbia Riverkeeper has approximately 8,000 members and supporters in Oregon and Washington. Riverkeeper's mission is to protect and restore the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. To achieve these objectives, Riverkeeper operates scientific, educational, and legal programs to protect water quality, fish and wildlife habitat, and human health throughout the Columbia River Basin. Riverkeeper's vision is to restore clean water from the headwaters to the Pacific and recover healthy populations of salmon and other species that support both tribal and non-tribal fishing. Riverkeeper's members catch and consume fish caught in the Columbia River, drink water from

the river, and recreate on and along the river. One of Riverkeeper's primary program areas is protecting the Columbia River and river communities from the threats posed by coal export projects, including Ambre Energy's proposed Coyote Island Terminals, LLC coal dock, which is part of the larger Morrow Pacific Project. Riverkeeper filed a series of comments, exhibits, and expert reports with DSL on Ambre's proposed removal-fill permit. Riverkeeper sent out multiple action alerts urging members to comment on Ambre's proposed removal-fill permit. Riverkeeper's members live, work, and recreate downstream of Ambre's proposed Coyote Island coal export dock and raised significant concerns about the dock's impact on fishing, water quality, public health, and river recreation. Riverkeeper's members also live, work, and recreate on and along the Columbia River where Ambre's barges would transport coal from the Port of Morrow the Columbia River Estuary at Port Westward.

Friends of the Columbia Gorge has 5,200 members. The mission of the Friends of the Columbia Gorge is to vigorously protect the scenic, natural, cultural, and recreational resources of the Columbia River Gorge. We fulfill this mission by ensuring strict implementation of the Columbia River Gorge National Scenic Area Act and other laws protecting the region of the Columbia River Gorge; promoting responsible stewardship of Gorge land, air, and waters; encouraging public ownership of sensitive areas; educating the public about the unique natural values of the Columbia River Gorge and the importance of preserving those values; and working with groups and individuals to accomplish mutual preservation goals. The Morrow Pacific project would harm the organization and its members, and violate our mission, by adversely affecting the water quality, fish and wildlife habitat, recreation and cultural resources of the Columbia River. The project would double barge traffic on the Columbia River, conflicting with river recreation and harming the recreation economy of the Columbia River Gorge. Friends of

the Columbia Gorge has submitted comments on the removal and fill permit, DEQ air permits, and Section 401 water quality certification. Friends staff have met with agency staff to discuss their opposition to this project. Friends sent email action alerts to its members encouraging them to attend hearings and submit comments on the permit applications. Friends' staff held public forums discussing the project and our concerns and also spoke to community groups about the projects impacts to the Columbia River. Friends' staff met with the applicant's representative to discuss the project and our concerns.

Sierra Club has over 600,000 members nationwide, including nearly 16,000 who reside in Oregon and almost 23,000 living in Washington. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club's concerns encompass a variety of environmental issues in Oregon, Washington and beyond, including an interest in protecting communities, waterways, and the broader environment. Sierra Club's members depend, at least in part, upon Sierra Club to provide them with opportunities to be involved through outings in the outdoors, communication with elected and other public officials, and regular communication about issues of concern to the membership. Many of Sierra Club's members and staff enjoy recreational, aesthetic, and scientific activities, including canoeing, kayaking, biking, hiking, sightseeing, and wildlife observation in areas that would be affected by the transport of coal, by rail, barge and ocean-going vessels in the Columbia River. If DSL's action to deny the removal/fill permit for the Coyote Island Terminal is overturned, as appellants request, Sierra Club's interests in these activities would be threatened. Sierra Club has been working for years in Oregon to preserve

and improve air and water quality, to reduce activities that result in climate change, and to promote non-fossil fuel energy. This work has included actively participating in administrative decisions related to this and other coal terminals. Sierra Club staff and members have been actively involved in the public process around DSL's action denying a removal/fill permit for the Coyote Island Terminal, including organizing rallies in front of DSL of more than 100 people in April and in the fall of 2012, the "Sound the Alarm" event in March 2013 with more than 200 people and Pioneer Square kids rally in March 2014 with over 500 people; submitting technical and member comments to the agency and other officials; organizing members to attend meetings; and educating members about the proposal.

(e) Statement of Public Interest

Petitioners are non-profit organizations that represent the interests of its members and the public in protecting the Columbia River and surrounding areas from polluting fossil fuel industries for purposes of environmental protection, clean water, recreation and fishing. Accordingly, petitioners seek to represent both their organizational interests as well as the public interest. That interest, as described above, is in the protection and restoration of the Columbia River as a foundation of the region's ecosystem, an interest that is broadly shared among the citizens of Washington, Oregon and the nation generally. These interests are affected by this proceeding because the project so plainly jeopardizes them: if appellants are successful and are granted the removal-fill permit at issue in this appeal, they could be allowed to build an 8-9 million ton/year coal facility on the banks of the Columbia River. The project would increase air and water pollution with coal that contains mercury, heavy metals and other toxins; substantially increase barge traffic in the river, adversely affecting recreation, commercial and recreational fishing and exercise of tribal treaty rights; increase bulk cargo traffic in the downstream portion

of the project, raising numerous impacts to other users and the public and raising the risks of a catastrophic spill of fuel or cargo contents, as well as other adverse ecological impacts of massive bulk cargo vessels. As documented in a March 20, 2014 Ecotrust Paper, the project would also have a major adverse economic impact to the people of the Columbia River, putting numerous jobs, investments and resources at risk. Petitioners are well qualified to represent these public interests. They represent tens of thousands of members who care about these issues, they have extensive policy, technical, and scientific expertise on staff and among their memberships on the issues involved in this appeal, they submitted extensive written and technical information to the Department regarding the adverse impacts to human health and the environment that would result from the project, and they have decades of experience advocating for the public's interest in environmental protection in the Columbia River. Petitioners have no financial stake, and will not profit from their participation in this appeal.

(f) Statement of Why Existing Parties Cannot Represent Petitioners' Interests.

Appellants seek to overturn DSL's permit denial and build a major industrial project on the Columbia River that petitioners strongly oppose, and hence are plainly unsuited to represent petitioners' interests. DSL also does not represent the interests of the petitioners. DSL has a statutory duty under ORS 196.825 to review the permit and apply the statutory criteria to determine whether a permit should be granted. Petitioners have extensive expertise on scientific, policy, and technical matters that can inform the Administrative Law Judge and DSL on the issues in this appeal. Moreover, petitioners and their members asked DSL to deny the permit on a number of grounds that DSL chose to ignore or rejected. Riverkeeper intends to provide additional information and argument that will supply alternative bases for DSL's decision to deny the permit, *i.e.* other reasons why the permit does not meet statutory criteria. Riverkeeper

often advocates for its members' and the public's interest before DSL staff and decisionmakers, and on occasion finds itself in adversarial positions with the agency, including litigation.

Riverkeeper and DSL represent two distinctly different viewpoints on the issues in this appeal, and hence DSL cannot represent Riverkeeper's interests.

(g) Alternative Inclusion under OAR 141-085-0575

Petitioners meet the standards for participation as a party for the reasons discussed above. However, in the event that DSL disagrees, petitioners ask to be included as a party under OAR 141-085-0575(4)(c). That provision authorizes persons who do not have "legally protected interests that are adversely affected" to be included as a party as long as they are aggrieved. Under OAR 141-085-0575(3)(b), a person is aggrieved if they participated in the Department's review of the project application by submitting written or verbal comments stating a position on the merits. As discussed above, petitioners and their members submitted both extensive written and verbal comments asking DSL to deny the application.

Respectfully submitted this 8th day of October, 2014.



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