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December 4, 2014

**VIA E-MAIL ([alison.g.webster@state.or.us](mailto:alison.g.webster@state.or.us))  
AND FIRST CLASS MAIL**

Alison Greene Webster  
Administrative Law Judge  
Office of Administrative Hearings  
7995 SW Mohawk Street  
Tualatin, OR 97062

Re: In the Matter of: Coyote Island Terminal LLC and Port of Morrow  
OAH Case Nos. 1403883 and 1403884

Dear Administrative Law Judge Webster:

Pursuant to OAR 137-003-0520, please find enclosed for filing the following original documents:

1. The State of Wyoming's Petition to Participate as a Party;
2. Affidavit of Christopher Carroll; and
3. Affidavit of Craig Grenvik.

Please contact me if you have any questions or require additional information.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads 'Janet E. Neuman'.

Janet E. Neuman  
Senior Counsel

JEN/jeh  
Enclosures  
copy w/enc: Mr. Michael J. McGrady (by e-mail)

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
DEPARTMENT OF STATE LANDS**

IN THE MATTER OF:  
COYOTE ISLAND TERMINAL, LLC

PORT OF MORROW

OAH Case No.: 1403883  
Agency Case No.: APP0049123-RF

OAH Case No.: 1403884  
Agency Case No.: APP0049123-RF

**THE STATE OF WYOMING'S PETITION  
TO PARTICIPATE AS A PARTY**

The State of Wyoming ("Wyoming") petitions the Oregon Office of Administrative Hearings to participate in the above captioned case as a full party pursuant to OAR 137-003-0535(2). The Oregon Department of State Lands' ("DSL") denial of Coyote Island Terminal, LLC's removal-fill permit was improper under Oregon state law. Further, the DSL's permitting regime as it relates to this specific removal-fill activity is preempted by federal law, and the DSL's permit denial violates the Commerce Clause of the United States Constitution. Wyoming should be granted party status in these proceedings because the denial of the permit directly impacts interstate commerce and will continue to harm Wyoming and its citizens if it is not corrected.

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**I. Name and Address of Petitioner and Petitioner's Attorneys: OAR 137-003-0535(4)(a) and (b).**

*Petitioner:*

State of Wyoming  
Office of the Attorney General  
123 State Capitol  
Cheyenne, WY 82002

*Petitioner's Attorneys:*

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**II. Statement of Level of Participation: OAR 137-000-0535(4)(c).**

Wyoming seeks to participate as a full party in this contested case on all matters and all issues to represent its sovereign interests and the interests of its citizens. Wyoming intends to participate in these proceedings with the same rights as any other party to present and challenge evidence, make argument, and seek relief. Wyoming is prepared to participate in the prehearing conference scheduled for December 16, 2014, and Wyoming requests that it be conferred full party status before this date.

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### **III. Statement of Petitioner's Interest: OAR 137-003-0535(4)(d).**

Wyoming seeks to protect its personal interests in the outcome of the agency's proceedings. A substantial portion of the eight million mega-tons of coal processed annually by Coyote Island Terminal's facility will likely come from Wyoming mines. *See* attached Carroll Aff. ¶ 16. The Wyoming Department of Revenue estimates that eight million mega-tons of coal have a generative value of approximately \$9.7 million to \$30.3 million in severance and ad valorem tax revenue to Wyoming. *See* attached Grenvik Aff. ¶ 10. The denial of the Coyote Island Terminal removal-fill permit impairs the ability of foreign markets to purchase coal from Wyoming. This coal is ready for transport and in high demand. Consequently, the denial of the removal-fill permit directly impacts Wyoming's revenue from coal.

Wyoming also has an interest in ensuring that a coastal state such as Oregon does not erect barriers to interstate commerce through a local permitting regime which impair Wyoming's ability to engage in international trade. *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 608 (1982) (states have a compelling interest in removing barriers to the "free flow of interstate commerce"). Wyoming has a compelling interest in the outcome of this proceeding because the denial of a permit for the construction of a coal port will eliminate logical, cost-effective, and crucial infrastructure for Wyoming's coal industry. *See State of Ga. v. Pennsylvania R. Co.*, 324 U.S. 439, 450 (1945) (a state may pursue remedies against an actor whose conduct stifles or impedes industry within the state, or whose conduct places the state's industries at a disadvantage in competitive markets). Without this infrastructure, Wyoming coal can only reach foreign markets through indirect transportation routes, and utilizing indirect routes will increase the cost of purchasing Wyoming coal. This added expense will make Wyoming coal less competitive in the energy marketplace, and will reduce the amount of Wyoming coal that is sold. If less Wyoming coal is purchased, the total tax revenue received from coal sales will diminish. Thus, if the denial of the Coyote Island Terminal removal-fill permit is upheld on appeal, Wyoming will lose millions of dollars in tax revenue. *See* Grenvik Aff. ¶¶ 5-10.

Wyoming's personal interests are within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing as required by OAR § 137-003-0535(8)(b). DSL is the

agency tasked with reviewing removal-fill permit applications and granting permits which satisfy certain criteria. ORS § 196.825; OAR § 141-085-0565. The notice of contested case hearing stated the issues which the proceedings will address, and the issues raised by Wyoming pertaining to its personal interests are within the scope of the notice. *See* Ruling on the Coyote Island Terminal, LLC (Applicant) Request for Hearing (stating that the issues to be addressed at hearing include whether the DSL erroneously denied the removal-fill permit and whether the DSL permitting regime is impermissible under the Commerce Clause).

#### **IV. Statement of Public Interests Represented by Wyoming: OAR 137-003-0535(4)(e).**

Wyoming will represent several public interests in this contested case as a sovereign state with primary responsibility for representing and advancing the interests of its citizens. *See Alfred L. Snapp & Son, Inc.*, 458 U.S. at 607 (discussing how states, under the doctrine of *parens patriae*, may pursue actions as sovereign entities to safeguard their citizens' interests which include the economic "health and well-being" of their populations and their interest "in not being discriminatorily denied [their] rightful status within the federal system."); *Missouri v. Illinois*, 180 U.S. 208, 241 (1901) (if the economic wellbeing and "comfort of the inhabitants of a state are threatened, the state is the proper party to represent and defend them.").

First, Wyoming's citizens have significant interests in the tax revenue and royalties derived from the coal which Coyote Island Terminal will process through its dock and port facility. Grenvik Aff. ¶ 5. These funds will finance projects and programs that serve public interests within Wyoming including public schools, a public university, public roadways, public infrastructure, and local governmental assistance. Wyo. Stat. Ann. § 9-4-601.

Second, Wyoming's citizens also have a strong public interest in low unemployment and the availability of well-paying jobs. The number of well-paying jobs in Wyoming's coal industry increases when Wyoming mines have markets for their surplus coal. The increase in coal-related jobs will improve the rate of employment in Wyoming's economy. *See* Wyoming State Geological Survey, *Figure 4. Wyoming Coal Production & Employment 1960-2013*, available at: <http://www.wsgs.uwyo.edu/research/energy/coal/Production-Mining.aspx> (showing that Wyoming coal

mining employs approximately 6,500 workers, and that coal industry employment is positively correlated with coal production). Where the economic wellbeing of a large segment of a state's population will be harmed by actions occurring outside of that state's borders, the state has a duty to challenge the actions "as the representative of the public." *Commonwealth of Penn. v. State of W. Va.*, 262 U.S. 553, 592 (1923), *aff'd sub nom. Commonwealth of Penn. v. State of W. Va.*, 263 U.S. 350, 44 (1923).

Finally, Wyoming will represent its citizens' interest in ensuring that coastal states do not restrict access to the navigable waters and shipping centers necessary for transporting goods and raw materials for sale in international commerce. *See State of Ga.*, 324 U.S. at 450-51. As "representative[s] of the public," states have an obligation to challenge interstate conditions which impair local industries and economic growth and which place the state's populace at an economic disadvantage in interstate commerce. *Id.*

Wyoming and its citizens will suffer harm if the denial of the Coyote Island Terminal removal-fill permit stands. If Wyoming coal is not allowed to reach foreign buyers because the Coyote Island Terminal dock and port facility is not constructed, Wyoming's citizens will lose millions of dollars in revenues that would pay for public projects and services such as elementary education, higher education, roadways, public infrastructure, and local governmental programs. The Wyoming coal industry, which is a significant employer, would be restricted in its ability to provide more coal-related jobs to Wyoming citizens, which would result in higher unemployment, fewer high-paying jobs, and a reduction in the attendant economic benefits to Wyoming and local economies. Additionally, the denial of the removal-fill permit conflicts with the Commerce Clause and will continue to unlawfully interfere with the ability of landlocked states to access foreign markets and ship their products and commodities overseas. These interests are exactly the kind of public interests which states routinely defend under the doctrine of *parens patriae*. *See Alfred L. Snapp & Son, Inc.*, 458 U.S. at 607. Wyoming is the only party qualified to represent the interests of its citizens, including interests in unimpeded access to navigable waterways, ports, and coastal centers for international commerce. *Alfred L. Snapp & Son, Inc.*, 458 U.S. at 607-608.

These public interests are within the scope of the agency's jurisdiction, since the DSL is responsible for reviewing permit applications and granting removal-fill permits. OAR § 137-003-0535(8)(b) (requiring that the agency consider "[w]hether [asserted] affected interest[s] [are] within the scope of the agency's jurisdiction" when deciding whether to admit participants); ORS § 196.825 (stating the criteria that the DSL shall consider when deciding whether to issue removal-fill permits); OAR § 141-085-0565 (stating the factors which the DSL shall consider when evaluating permit application). Additionally, the public interests raised by Wyoming are within the scope of the contested case hearing. *See* OAR § 137-003-0535(8)(b) (stating that the agency shall consider "[w]hether [asserted] affected interest[s] [are] ... within the scope of the notice of contested case hearing" when evaluating petitions for participation); Ruling on the Coyote Island Terminal, LLC (Applicant) Request for Hearing (listing the constitutionality of Oregon's permitting regime and the factual basis for the DSL's permit denial as matters to be addressed in the contested case hearing). Wyoming is an appropriate participant in these proceedings because its interests are within the scope of the agency's jurisdiction and the contested case hearing.

**V. No Other Party Can Adequately Represent Wyoming's Interests: OAR 137-003-0535(4)(f).**

Wyoming seeks to participate in these proceedings because the existing parties to this contested case cannot adequately represent Wyoming's personal and public interests. When evaluating a petition for contested case participation, tribunals must consider the "nature of the issues and [] the presence of other qualified parties representing the same public interest" and not allow a decision that "exclude[s] an asserted public interest altogether." *Marbet v. Portland Gen. Elec. Co.*, 561 P.2d 154, 160 (Or. 1977).

At this time, the only parties with standing to proceed are Coyote Island Terminal and the Port of Morrow. *See* Ruling on the State of Wyoming's Request for Hearing, at 3. Neither of these parties has the background, expertise, or incentive to represent the unique interests of the State of Wyoming and its citizens. *See Alfred L. Snapp & Son, Inc.*, 458 U.S. at 607. Only Wyoming can adequately represent the interests personal to Wyoming as a sovereign state and the public interests

held by its citizens. *Id.* Similarly, only Wyoming can represent the interests of its citizens in the many public services dependent upon revenues from the sale of Wyoming coal and in the statewide and localized employment and economic benefits generated through the increased volume of Wyoming coal sold to overseas buyers. *Id.* at 607-08. No private party, or other governmental entity, can stand in the place of Wyoming to represent the interests of Wyoming and its citizens.

Moreover, only a sovereign, landlocked state can fully contest the decision's adverse impacts on interstate commerce. Wyoming will suffer actual harm if its current surplus coal cannot ship through the Port of Morrow to foreign markets where there is presently a demand for its purchase. Grenvik Aff. ¶¶ 5-10; Carroll Aff. ¶¶ 11-17. Neither Coyote Island Terminal nor the Port of Morrow can stand in the place of Wyoming to assert the harm that Wyoming will suffer if an important Wyoming-based commodity cannot access interstate and international markets. Similarly, Wyoming's status as a sovereign state means that it has a right to participate and defend its interests regardless of whether other states or the federal governmental also seek participatory status to address common concerns. *See Alfred L. Snapp & Son, Inc.*, 458 U.S. at 607-08.

Opponents to Wyoming's participation might argue that because Coyote Island Terminal, the Port of Morrow, and the State of Wyoming all desire that the DSL issue the removal-fill permit, Wyoming's interests are adequately represented by the two parties presently participating in the contested case. However, governmental entities inherently and necessarily advocate for public interests which private entities cannot. *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 899 (9th Cir. 2011).<sup>1</sup>

In fact, the Ninth Circuit in *Citizens for Balanced Use* found that intervention was warranted to allow a mix of private and public participants who shared "a unity of objectives" because the

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<sup>1</sup> The direction provided by federal courts should guide the Oregon Office of Administrative Hearings in its application of OAR § 137-003-0535(4)(f) in this contested case. *See Forest Grove Brick Works, Inc. v. Strickland*, 559 P.2d 502, 506 n.8 (1977) (noting that "decisions of the Federal Courts" applying federal procedural rules which have counterparts in Oregon procedural rules "are of helpful guidance" to Oregon state tribunals); *Hussey v. Huntsinger*, 696 P.2d 580, 583 (1985) (stating that Oregon courts "look to federal cases for guidance" when applying state procedural rules that are similar to federal procedural rules).



underlying reasons why the different participants desired a particular objective were different and thus no party could claim that it adequately represented the interests of the other parties. *Id.* at 899. Stated differently, in the context of intervention, a party cannot adequately represent the interests of another party where the parties share one particular outcome but have different interests regarding “the litigation as a whole.” *Id.* See also *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996) (internal quotations and citation omitted) (“[t]he government must represent the broad public interest, not just the economic concerns of [one] industry .... For this reason alone, the interests of [private parties] will not necessarily coincide, even though, at this point, they share common ground.”); *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1255 (10th Cir. 2001) (although a “presumption of adequate representation arises when an applicant for intervention and an existing party have the same ultimate objective in the litigation ... this presumption [is] rebutted [when] the public interest the government is obligated to represent may differ from the [other party’s] particular interest.”).

Moreover, Coyote Island Terminal and the Port of Morrow’s interests are not identical to the State of Wyoming’s interests because Wyoming’s interests in this litigation extend beyond the specific removal-fill permit at issue in this matter. *Citizens for Balanced Use*, 647 F.3d at 899. The DSL misinterpreted and misapplied ORS § 196.825 in denying Coyote Island Terminal’s permit application. Wyoming intends to advocate for the proper interpretation and application of the statute so that future coal shipping facilities are not improperly denied permits. In addition, Wyoming desires to participate in this appeal in part to ensure that the DSL does not continue to rely upon an unconstitutional application of its permitting regime that prevents Wyoming-produced coal from reaching international markets by denying future permit applications for coal shipment facilities.

In contrast, Coyote Island Terminal and the Port of Morrow’s interests in this litigation are limited to the specific removal-fill permit at issue. Coyote Island Terminal and the Port of Morrow do not have an interest in preventing the DSL’s misinterpretation or misapplication of ORS § 196.825 in unrelated permit applications. If the DSL reverses its decision and grants the Coyote Island Terminal removal-fill permit, Coyote Island Terminal, and the Port of Morrow will be

satisfied and they will have no stake in future violations of the Commerce Clause under the permitting regime. Indeed, the parochial interests of Coyote Island Terminal and the Port of Morrow would actually benefit from the reduced competition that would result if DSL denies subsequent permit applications in violation of the law. Accordingly, these private entities cannot represent Wyoming's interests in this matter.

## **VI. Conclusion.**

The Office of Administrative Hearings should grant party status to Wyoming and allow Wyoming to participate as a full party in the contested case hearing. Wyoming seeks to redress the decision to deny the Coyote Island Terminal removal-fill permit because the decision is inconsistent with Oregon law and impermissible under federal law, including the Commerce Clause of the United States Constitution. The denial of the removal-fill permit prevents the construction of a facility necessary for the international sale of Wyoming-produced coal. It also directly impairs the interests of Wyoming and its citizens in tax revenues, in increased employment in the coal industry, and in localized economic benefits that correlate with increased coal production. The denial of the removal-fill permit has harmed and will continue to harm Wyoming and its citizens, and therefore, Wyoming should be granted party status in this appeal.

Wyoming is uniquely qualified to represent its personal and public interests. The parties currently participating in this action cannot adequately represent the interests of Wyoming and its citizens in tax revenues and the social programs they support. Coyote Island Terminal and the Port of Morrow have narrow private interests which do not advance Wyoming's broader interest in ending local permitting regimes, such as DSL's, which place unconstitutional restraints upon interstate and international commerce. Allowing Wyoming to intervene at this point will neither prejudice any existing party nor delay the proceedings.

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The State of Wyoming requests that the Office of Administrative Hearings confer party status on Wyoming and allow it to participate as a full party in the contested case.

DATED this 4th day of December, 2014.

By: 

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*Pro hac vice admissions pending*

Of Attorneys for Petitioner State of Wyoming

## **CERTIFICATE OF FILING AND SERVICE**

I certify that on December 4, 2014, I filed the foregoing Petition to Participate as a Party and attached Grenvik Affidavit and Carroll Affidavit with the Office of Administrative Hearings via email and sent the same via first class mail to the following address:

Alison Greene Webster  
Office of Administrative Hearings  
7995 SW Mohawk Street  
Tualatin, OR 97062  
alison.g.webster@state.or.us

I further certify that, on the same date, I served a copy of the same via email and first class mail on the following attorneys of record:

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## **AFFIDAVIT OF CHRISTOPHER CARROLL**

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Christopher Carroll, being first duly sworn, deposes and states of his own knowledge:

1. I am a geologist in the Energy and Mineral Resources Division of the Wyoming State Geological Survey. I am over 18 years of age, I have knowledge of the facts stated herein either from my own personal knowledge or from the records of the Wyoming State Geological Survey, and am competent to testify thereto.

2. I graduated with a Bachelor's Degree in Geology from the University of California at Santa Barbara in 1982. I am registered as a Professional Geologist in Wyoming, number 3905. I am also certified by the American Institute of Professional Geologists as a Professional Geologist, number 11633. I have worked in the petroleum industry and for Colorado and Wyoming state governments as a geologist over the past thirty years. During that time, I have worked on matters related to coal mining, coal geology, and the coal industry.

3. Prior to my employment with the Wyoming State Geological Survey, I was the coal geologist for the Colorado Geological Survey for fourteen years. At the Colorado Geological Survey I worked on stratigraphic databases for Colorado's seven coal basins, and contributed to annual mineral and energy reports to the Colorado Legislature.

4. For the past two years, I have been the Wyoming State Geological Survey's coal geologist. I manage the agency's coal research program, which covers the largest state producer of coal in the United States. I perform qualitative assessments for energy resources in sedimentary basins. I also perform resource assessments of Wyoming's coal basins from the Powder River Basin in northeast Wyoming to the Greater Green River Region in southwest Wyoming. I designed and updated the Geological Survey's coal website <http://www.wsgs.uwyo.edu/Research/Energy/Coal/Default.aspx> and coal resource summary reports for the State of Wyoming's Consensus Review Economic Group (CREG) <http://www.wsgs.uwyo.edu/public-info/onlinepubs/Summary-Reports.aspx>. Additionally, I maintain and manage the National Coal Resource Data System (NCRDS) cooperative grant project between the United States Geological Survey and the Wyoming State Geological Survey with over 24,000 drill holes and measured section data points.

5. The Wyoming State Geological Survey is a separate operating agency under the executive branch of the State of Wyoming. *See* Wyo. Stat. Ann. §§ 9-2-801 through 9-2-810. The Wyoming State Geological Survey's purposes are: (1) to study, examine, and understand the geology, mineral resources, and physical features of Wyoming; (2) to prepare, publish and distribute (free or for sale) reports and maps of Wyoming's geology, mineral resources, and physical features;

and (3) to provide information advice, and services related to the geology, mineral resources, and physical features of Wyoming. The agency's stated mission is to promote the beneficial and environmentally sound use of Wyoming's vast geologic, mineral and energy resources while helping protect the public from geologic hazards. By providing accurate information and expanding knowledge through the application of geologic principles, the Wyoming State Geological Survey contributes to the economic growth of the State and improves the quality of life for the State's residents.

6. The Wyoming State Geological Survey provides information on the location of potential natural resources, as well as the potential quality and quantity of the natural resources in a given area. The Wyoming State Geological Survey gains its geologic information and data through field mapping, rock and mineral sampling and identification, groundwater studies, and through industry sources that provide information to the agency. This critical information feeds into our understanding and characterization of the natural resources that exist in a given area.

7. All of the information and data the Wyoming State Geological Survey gathers is openly shared with the public, government leaders and industry through web site postings, consultations, presentations and formal publications. State and federal agencies use the information and data provided by the Wyoming State



Geological Survey to debate and draft policy for future revenue projections, as well as to develop plans regarding energy and other natural resources, including water. Industry uses the information gathered by the Wyoming State Geological Survey to help guide their resource assessments, exploration plans and areas of commercial activity.

8. I have reviewed Coyote Island Terminal, LLC's application for a fill permit for the coal port at the Port of Morrow. The term "low-sulfur intermountain coal" used in the application is generally understood to refer to coal beds found in the Rocky Mountain and Northern Great Plains regions of the states of North Dakota, Montana, Wyoming, Utah, Colorado, and New Mexico. The Cretaceous and Tertiary coals found in those areas are low sulfur in nature.

9. By definition, coal with  $< 1.2\%$  sulfur content is considered low sulfur for steam coal purposes. Wyoming coal is sub-bituminous rank low sulfur coal because it contains sulfur concentrations  $< 0.7\%$ . Coal mined in the Powder River Basin today has particularly low amounts of sulfur, ranging from  $0.2\%$  to  $0.6\%$  (Keystone Coal Industry Manual, 2010). The bituminous coals of southwest Wyoming are similarly considered low sulfur in nature because sulfur content is characteristically related to the depositional history rather than differences in coal rank.

10. The amount of sulfur in a coal deposit is important because sulfur

compounds from power plant emissions are a source of acid rain. Low-sulfur coal use and updated emission control technologies are the two most important environmental factors for reducing acid rain and other hazardous air pollutants. Most of the coal produced in the eastern United States must be cleaned and washed in preparation plants for use as steam coal because the average coal produced in there is  $> 0.8\%$  sulfur. In contrast, bituminous coals from Utah and Colorado, sub-bituminous coals from the Powder River Basin, and the Tertiary lignites from North Dakota all contain low amounts of sulfur and trace elements of hazardous air pollutants.

11. In terms of production, Wyoming is the leading coal producing state with 388 million short tons of coal produced in 2013. This amount of production was down 3% from the 2012 production of 401 million short tons, but is still more coal than the next six highest coal producing states combined (West Virginia, Kentucky, Pennsylvania, Illinois, Texas, and Montana). In 2008 Wyoming coal mines produced a record 466.3 million tons of coal from the same coal mines that are active today.

12. These production fluctuations are driven by market demand for coal, not the mines' capacity to produce the coal. Accordingly, the 3% decline in production from Wyoming coal mines from 2012 to 2013 represents a market demand change. If new markets open up, or the current demand for Wyoming coal

increases, the Wyoming coal mines could resume higher production rates to meet the new market demands. If a market became available next year, Wyoming mines have the capacity to effectively supply up to seventy-five million tons of coal annually from the steam coal mine operation system in Wyoming's Powder River Basin.

13. In terms of reserves, Wyoming has 165.1 billion short tons of recoverable coal, and 126.5 billion tons of that are found in the Wyoming part of the Powder River Basin (modified from USGS, 2013). In terms of coal that meets environmental compliance requirements (coal < 1.2% sulfur), Wyoming's Powder River Basin is the leading coal basin in the intermountain west. Over 90% of Wyoming's Powder River Basin coal reserves contain < 1.2% sulfur. Only Montana and Illinois rival Wyoming for reserves. However, 90% of Illinois coal contains > 1.2% sulfur. Further, industrial coal consumers favor coal from Wyoming's Powder River Basin over any other production location in the intermountain region because of favorable costs and available transportation and mining infrastructure.

14. Wyoming's Powder River Basin has numerous railroads and coal loading and handling facilities. Northern Powder River Basin coal can be shipped to the Port of Morrow facility in Oregon on the Burlington Northern Santa Fe (BNSF) and Union Pacific (UP) rail lines that run through Montana, Idaho, and

Washington. Southern Powder River Basin coal can be shipped to the Port of Morrow on UP lines that run through Utah, Idaho, and Oregon.

15. Instead of opening new coal mine facilities in Washington or Montana to provide coal to the Port of Morrow for the Coyote Island Terminal project, it is considered much more economical to produce coal from the existing Powder River Basin coal mines that are already operating below capacity. Surface disturbance would also be minimized by utilizing existing, permitted coal mines. Coal shipments to the Port of Morrow from Wyoming's Powder River Basin, as opposed to most other intermountain coal mines, is also considered much more economical because of short transportation routes and the existence of substantial rail infrastructure in the Powder River Basin.

16. When compared to other coal deposits in the intermountain region, it is more likely than not that the coal anticipated to be shipped through the Port of Morrow will come from mines in Wyoming. A higher volume of coal can be produced faster from the Wyoming Powder River Basin coal mines than anywhere else in the United States. Moreover, this high volume of coal can be shipped to the Port of Morrow in a shorter period of time making the coal from active Wyoming coal mines the most economically plausible source for the Coyote Island Terminal project.

17. Other states such as Colorado and Utah have higher heat value coal,

but the mines in those states lack the rail line infrastructure and direct rail service to the Pacific Northwest that the mines in the Wyoming Powder River Basin's have already in place. Further, no coal production area other than Wyoming's Powder River Basin has the excess capacity or the ability to ramp up production to the amount of coal necessary to service the Coyote Island Terminal project. Accordingly, the coal mines in Wyoming's Powder River Basin are currently ready and able to provide the Pacific Rim market with environmentally compliant coal.

DATED this 8th day of September, 2014.

  
\_\_\_\_\_  
Christopher Carroll

STATE OF WYOMING            )  
  ) SS  
COUNTY OF ALBANY        )

The foregoing AFFIDAVIT OF CHRISTOPHER CARROLL was subscribed and sworn to before me by Christopher Carol this 8th day of September, 2014.



Witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 9/23/17

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**AFFIDAVIT OF CRAIG GRENVIK**

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Craig Grenvik, being first duly sworn, deposes and states of his own knowledge that:

1. I am the Administrator of the Mineral Tax Division of the Wyoming Department of Revenue. I have held this position since 2004. I am over 18 years of age, I have knowledge of the facts stated herein either from my own personal knowledge, or from the records of the Wyoming Department of Revenue, and am competent to testify thereto.

2. I hold a Bachelors Degree in Petroleum Engineering and a Masters of Business Administration. Both degrees are from the University of Wyoming, 1988 and 1995 respectively.

3. In my position with the Department of Revenue, I oversee a staff that administers the State of Wyoming's mineral tax laws, including collection of severance taxes imposed for the privilege of removing minerals and other valuable deposits, including coal. *See* Wyo. Stat. Ann. §§ 39-11-102; 39-14-101 through 39-14-711.

4. The Department of Revenue's Mineral Tax Division collects and maintains data relevant to the assessment and collection of mineral severance and

ad valorem taxes. This information is stored electronically on the Mineral Tax Division's computer system (MTS II).

5. The State assesses a seven percent severance tax on the fair market value of all coal extracted from a surface mine. Wyo. Stat. Ann. §§ 39-14-103(a), -104(a). It also imposes an ad valorem tax on the fair market value of the gross product of all mines in Wyoming. Wyo. Stat. Ann. § 39-13-102(m). The tax rate for ad valorem taxes is based on the mill levy for the county where the mine is located. *See generally*, Wyo. Stat. Ann. § 39-13-104.

6. The State of Wyoming's severance and ad valorem taxes are distributed to benefit state programs, cities, counties, public schools and institutions of higher learning. Wyo. Stat. Ann. §§ 39-13-111, 39-14-801. Additionally, the taxes pay for water and highway infrastructure projects, and also fund the State of Wyoming's revenue accounts including the State's permanent mineral trust fund, permanent mineral trust fund reserve account, general fund and budget reserve account. *Id.*

7. The surface coal mines in Wyoming contain low amounts of sulfur and are generally located in northeast and southwest portions of Wyoming. The coal that comes from mines in southwest Wyoming burns at a higher British thermal unit (Btu) than the coal extracted from the Powder River Basin in northeast



Wyoming. Therefore, the coal extracted from southwest Wyoming typically has a higher fair market value than the coal extracted from northeast Wyoming.

8. In 2013, the coal mines in Campbell County in northeast Wyoming produced 352,804,596 tons of coal. This coal had a taxable value of \$3,297,783,706. From this production, the State collected \$230,844,859.42 in severance tax and \$196,999,705.25 in ad valorem tax. The combined total of \$427,844,564.67 in severance and ad valorem taxes collected in 2013 in Campbell County equals \$1.212696 per ton of extracted coal.


9. Also in 2013, the coal mines in southwest Wyoming produced 9,081,508 tons of coal. This coal had a taxable value of \$255,256,855. From this production, the State collected \$17,867,979.85 in severance tax and \$16,591,695.58 in ad valorem tax. The combined total of \$34,459,675.43 in severance and ad valorem taxes collected in 2013 in southwest Wyoming equals \$3.794488 per ton of extracted coal.

10. According to the Oregon Department of State Land's August 18, 2014, decision denying Coyote Island Terminal, LLC's fill permit, the company's coal port when constructed can export eight million metric tons of coal per year. The permit application submitted by Coyote Island Terminal, LLC, received by the Oregon Department of State lands on August 14, 2014, states that the company will export low-sulfur intermountain coal. If the eight million metric tons of coal



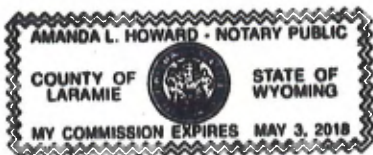
scheduled to pass through the Coyote Island Terminal, LLC's port each year came from northeast Wyoming, the extracted coal would generate \$9,701,564.42 in severance and ad valorem taxes to the State based on the 2013 coal valuation. If the eight million metric tons of coal scheduled to pass through the Coyote Island Terminal, LLC's port each year came from southwest Wyoming, the extracted coal would generate \$30,355,906.02 in severance and ad valorem taxes to the State based on the 2013 coal valuation. Therefore, if the coal that Coyote Island Terminal, LLC, anticipates it will export from this facility came from Wyoming, the projected annual economic benefit to the State of Wyoming from the facility would range between approximately \$9.7 million to \$30.3 million per year.

DATED this 5th day of September, 2014.

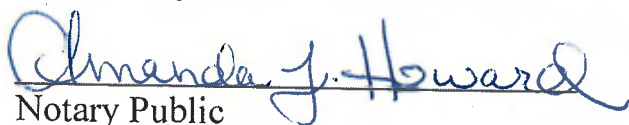
  
\_\_\_\_\_  
Craig Grenvik

STATE OF WYOMING            )  
  ) SS  
COUNTY OF LARAMIE        )

The foregoing AFFIDAVIT OF CRAIG GRENVIK was subscribed and sworn to before me by Craig Grenvik this 5th day of September, 2014.



Witness my hand and official seal.

  
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Notary Public

My Commission Expires: May 3, 2018