United States Senate
WASHINGTON, DC 20510

October 30, 2013

Honorable Jo-Ellen Darcy
Assistant Secretary of the Army for Civil Works
Office of the Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, D.C. 20310-0108

Honorable Nancy Sutley
Chairwoman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, DC 20503

Dear Assistant Secretary Darcy and Chairwoman Sutley,

On May 22, 2013, the Army Corps of Engineers (Corps) received a petition from several organizations requesting the Corps undertake a "single, comprehensive, area-wide environmental impact statement (EIS) under the National Environmental Policy Act (NEPA)" for proposed export terminals in Oregon and Washington. Moving forward with an EIS in the manner the petition requests would set a dangerous precedent for the type of evaluation that is required under the NEPA for exports of American products.

We were pleased to see the testimony of Jennifer Moyer, Acting Chief of the Regulatory Program, at a hearing in the House Energy and Commerce Committee on June 18, 2013. At that hearing, Acting Chief Moyer recognized that many of the issues the Corps was asked to consider in the organizations' petition "are outside the Corps' control and responsibility for the permit applications related to the proposed projects." Acting Chief Moyer's testimony specifically noted that it is inappropriate to review the "ultimate burning of the coal overseas" because such an action is "attenuated and far removed from the activities regulated by the Corps at any of the three shipping facilities."

We agree. Such a review effectively places a climate change litmus test on exports and requires a type of analysis that is not practicable, but is certain to lead to a slippery slope that undermines jobs, American businesses and exacerbates our trade deficit. NEPA requires a 'reasonably close, causal relationship' between cause and effect of activities covered in the scope of review.[1] Cumulative concerns like greenhouse gas emissions that may occur in countries across the Pacific Ocean are not closely related to the projects you are being asked to consider and we applaud the Corps' decision to recognize that this is the case.

While we are relieved to hear that the Corps does not plan to undertake the analysis requested by the petitioners, we are concerned that future Administrative action will force the Corps to move

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[1] *U.S. Dept. of Transportation v. Public Citizen,* 541 U.S. 752 (2004) and *Ohio Valley Environmental Coalition v. Aracoma Coal*, 556 F.3d 177 (4th Cir. 2009)

forward with the expansive analysis Ms. Moyer's testimony rejected. The Administration has yet to finalize its *Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions* that was originally released on February 18, 2010. The fact that the document could be finalized at any moment leads to continuing uncertainty surrounding the export issue. Because that is the case, we seek answers to the following questions:

1. Has the Council on Environmental Quality and the Corps been in contact with one another about this draft guidance as it relates to these proposed export projects?
2. If your agencies have been in contact with one another, has the Corps factored the potential guidance into its plans for review of these projects?
3. If your agencies have been in contact with one another regarding the draft guidance, is the Administration planning to exempt the Corps from the NEPA/GHG requirement?
4. If the new guidance is issued in a manner similar to the draft guidance, will the Corps be forced to rescind its commitment to the House Energy and Commerce Committee to limit the scope of its analysis to issues that fall within its "control and responsibility?"
5. Has the Council on Environmental Quality reviewed the potential impact on the pace of permitting for federal and private sector projects as a result of implementation of the draft guidance? If so, what are the results? If not, do you intend to do so before the guidance is finalized?
6. What economic analysis has been comprehended and completed to analyze the economy-wide effects of implementing the draft guidance?
7. From what sources did the agency derive the science for developing the draft guidance and do all those sources comply with the Data Quality Act as well as the December 2012 addendum to Guidance for Evaluating and Documenting the Quality of Existing Scientific and Technical Information?

We are pleased that the Corps has committed that it will not expand NEPA reviews of export projects to a level that is well beyond the appropriate scope. Doing so would set a dangerous precedent for review that would place these and future export projects in the United States at a competitive disadvantage. We hope you can assure us that this commitment will not be broken because of the Administration's greenhouse gas guidance.

Sincerely,

David Vitter
United States Senate

Joe Manchin
United States Senate

John Barrasso, MD
United States Senate

Heidi Heitkamp
United States Senate

Jeff Sessions
United States Senate

James Inhofe
United States Senate