

1 BEFORE THE STATE OF WASHINGTON
2 ENERGY FACILITY SITE EVALUATION COUNCIL

3 In the Matter of:
4 Application No. 2013-01

CASE NO. 15-001

5 TESORO SAVAGE, LLC
6 VANCOUVER ENERGY DISTRIBUTION
7 TERMINAL


8 RESPONSE OF APPLICANT
9 TESORO SAVAGE TO PORT OF
10 VANCOUVER USA'S MOTION
11 FOR PARTIAL SUMMARY
12 JUDGMENT RE: PREEMPTION

13 In response to Intervenor Port of Vancouver USA's Motion for Partial Summary
14 Judgment Regarding Preemption (the "Motion"), Applicant Tesoro Savage Petroleum
15 Terminal LLC, hereby adopts and incorporates the facts and law set forth in the Motion
16 and requests that the Council grant the relief sought.

17 As demonstrated in the Motion, Federal law preempts the Energy Facility Site
18 Evaluation Council from imposing conditions in a site certification agreement that have
19 the effect of regulating both interstate rail transportation and Columbia River vessel
20 traffic. The Interstate Commerce Commission Termination Act preempts actions under
21 state laws that seek directly and indirectly to regulate rail operations. Likewise, Congress
22 delegated power to the Coast Guard to preempt actions under state laws to control vessel
23 traffic, enhance vessel safety, and to decrease environmental hazards. For the reasons
24 articulated in the Port of Vancouver USA's Motion, the Motion should be granted.

25 Dated this 28th day of April, 2016.

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RESPONSE TO MOTION FOR PARTIAL SUMMARY
JUDGMENT RE: PREEMPTION - 1

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CERTIFICATE OF SERVICE

6 VANCOUVER ENERGY DISTRIBUTION
7 TERMINAL

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I hereby certify that I have this day served the foregoing document, Response of Applicant Tesoro Savage to Port of Vancouver USA's Motion for Partial Summary Judgment Re Preemption, upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120(3).

EXECUTED at Seattle, Washington on this 28th day of April, 2016.



Amanda Kleiss, Declarant