



Los Angeles City Council  
Innovation, Grants, Technology,  
Commerce and Trade Committee

December 15, 2015

### **Testimony of David Pettit**

Thank you for the opportunity to speak here this afternoon. I am David Pettit, a Senior Attorney at the Natural Resources Defense Council (NRDC).

We are here because of a failure in governance. Legally binding promises were made by the Port of Los Angeles but were deliberately broken -- for years -- to the detriment of the people of Los Angeles. That failure can and must be fixed.

Here is how this happened. In 2002, NRDC filed a lawsuit challenging an expansion project at the China Shipping terminal at the Port. The Court of Appeal issued an injunction stopping construction, and the City came to the settlement table. Two important things came out of the negotiations that followed: a 2004 Stipulated Judgment containing pages of promises by the City and Port, and an Environmental Impact Report (EIR) that was completed in 2008 for the expansion project. The 2008 EIR contained dozens of mitigation measures that the Port agreed to implement on specific timetables.

However, the Port never renegotiated its lease with China Shipping to include the terms of the 2008 EIR. In 2009, the Villaraigosa administration, with the advice of the City Attorney's office, made the decision to allow China Shipping, a Chinese state-owned company, to ignore many of the promises made in the 2004 Stipulated Judgment and the 2008 EIR. A copy of a letter reflecting this decision is attached to this testimony as Exhibit "A." This decision was flatly illegal both as to the Stipulated Judgment and under California law governing the CEQA process.

For years thereafter, up until mid-2015, the Port kept its internal decision to give China Shipping a free pass hidden from the public even as the Port dithered about how to get the EIR process back on track. Many Internal Port meetings were held and spreadsheets prepared identifying the violations, see, e.g., Exhibit "B" hereto, but no action was taken and no one outside of the Port was informed. I must emphasize that the Port hid this information from the public, despite regular meetings with community members and environmental organizations who regularly inquired and are interested in the status of CEQA mitigation measures at the Port.

At some point in 2015, the Port decided to go public. There is now a public process under way under CEQA to deal with the violations of the 2008 EIR. The new Port Executive Director, Gene Seroka, has also directed his staff to conduct an audit of CEQA compliance at the nearby TraPac terminal; those results are expected in January, 2016. NRDC is committed to making sure that the Port does everything possible to try to make up for these past failures, and to make sure that the law is being followed at TraPac and other Port-related CEQA projects.

**NATURAL RESOURCES DEFENSE COUNCIL**

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Here is what needs to be done.

First, an audit of compliance with CEQA mitigation measures needs to be conducted for every Port CEQA project, and the results should be posted online. There should be quarterly public updates for any mitigation measure that has not been 100 percent complied with. There is no reason to delay this work until the China Shipping EIR has been completed. Moving forward, this auditing process should attach to every port project to ensure accountability and to restore public trust. We suggest that an independent oversight committee be set up to monitor CEQA compliance at the Port.

Second, when the TraPac audit has been completed, the Port needs to calculate the volume of diesel and other emissions that occurred but should not have, and produce and execute a plan to mitigate those emissions. This will be expensive, but the expense could have been avoided if the Port had complied with the law and its own agreements.

Third, the Port will need to dig deep into its pocket when the new China Shipping EIR is completed. A full list of the illegally-halted mitigation measures and Stipulated Judgment terms at stake is attached hereto as Exhibit "C." Fixing the two most significant problems, use of LNG rather than diesel trucks and using modern yard equipment will cost many millions of dollars. Again, the large current cost could have been avoided if the Port had not decided in 2009 to violate the law.

Last, the Port should use this opportunity to create a meaningful plan, with enforceable timelines and five-year reopeners, to eliminate fossil-fuel combustion in Port operations where and when feasible. For example, for operations that involve transport of cargo containers in a closed loop to nearby railyards, diesel and LNG trucks should be phased out in favor of zero-emissions drayage systems of the type that the Port and the South Coast Air Quality Management District are now funding. This change can be done right now for the SCIG project, which is in litigation and has not commenced construction. Delivery of containers to more distant locations should be done by the cleanest form of combustion until zero-emission systems are ready for those applications.

I am hopeful that the current Administration will deal meaningfully with these problems -- problems that it inherited but now needs to fix. Thank you for your time and consideration this afternoon.

Sincerely,



David Pettit  
Senior Attorney  
Natural Resources Defense Council

# **EXHIBIT A**



425 S. Palos Verdes Street Post Office Box 151 San Pedro, CA 90733-0151 TEL/TDD 310 SEA-PORT www.portoflosangeles.org

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President

Jerilyn López Mendoza  
Vice President

Kaylynn L. Kim

Douglas P. Krause

Joseph R. Radsich

Geraldine Knatz, Ph.D

Executive Director

April 27, 2009

Mr. Li Shaode  
President  
China Shipping (Group) Company  
No. 700, Dong Da Ming Road  
Shanghai, China 200080

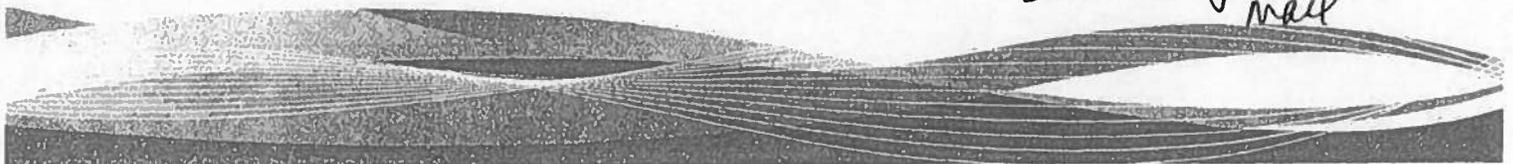
Dear Li Shaode,

I want to thank Mr. H. Z. Zhao, Deputy Managing Director of China Shipping Container Lines (CSCL), and other staff for meeting with Ms. Kathryn McDermott, Deputy Executive Director of the Port of Los Angeles (Port) in Shanghai on April 17, 2009 in response to our letter of March 31, 2009 and our concerns about CSCL services calling at the Port. I heard it was an excellent meeting, and I believe the issues that were of concern to China Shipping were addressed.

The Port recognizes that during the current economic crisis, shipping lines have redeployed vessels in an attempt to cut costs. As Ms. McDermott mentioned in your meeting, our Mayor recently met with members of the PMSA and told them that it was important that the Port show flexibility in implementing environmental measures such as AMP during this economic crisis. During this crisis, the Port will not hold China Shipping responsible for any outcome as a result of not meeting the 70 percent AMP requirement. As was suggested in the meeting, as current economic conditions improve, it is our expectation that China Shipping will redeploy AMP capable vessels into this service.

Additionally, you have the assurances of the Port and West Basin Container Terminal that China Shipping's service requirements will be met for both the AAS and AAC services.

Sent via fax &  
mail



Mr. Li  
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Thank you for honoring our request to reconsider keeping the service in the Port. We remain privileged to be in partnership with China Shipping.

I look forward to seeing you on May 13th when you are honored at the International Maritime Hall of Fame at the United Nations.

Sincerely,

  
GERALDINE KNATZ, Ph.D.  
Executive Director

GK/KM:ci

forward to HZ Zhao  
Lisa Wang  
Zhang Bing



P-999

425 S. Palos Verdes Street Post Office Box 151 San Pedro, CA 90733-0151 TEL/TDD 310 SEA-PORT www.portoflosangeles.org

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Mayor, City of Los Angeles

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Cindy Miscikowski  
President

David Arian  
Vice President

Robin M. Kramer

Douglas P. Krause

Sung Won Sohn, Ph.D.

Geraldine Knatz, Ph.D.

Executive Director

July 19, 2012

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RECEIVED

By: Melissa Malahni

JUL 20 2012

Mr. Zhang Bing  
President  
China Shipping (North America) Holding Co., Ltd.  
11 Philips Parkway  
Montvale, NJ 07645

REAL ESTATE DIVISION

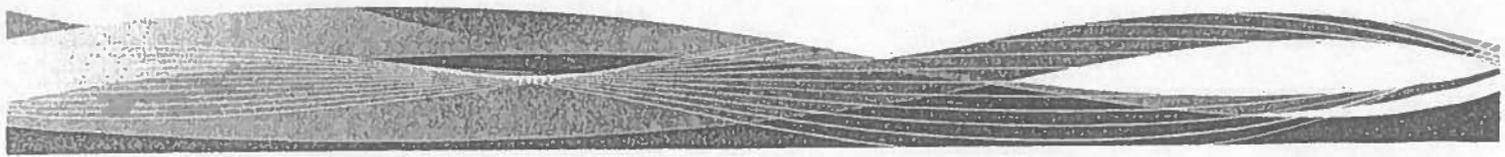
Dear Zhang Bing:

This letter will amend the Temporary Waiver of Alternative Maritime Power (AMP) Requirement for Permit No. 999 dated December 20, 2011. That letter provided a temporary waiver through August 14, 2012, based on certain terms and conditions.

China Shipping has now requested an extension through December 31, 2013. China Shipping is working on dates to fitting the 9,600 TEU vessels with AMP capability, which was a condition of the December 20, 2011 letter.

The Port of Los Angeles must consider several issues in reviewing your request. First, the CARB rule will take effect on January 1, 2014. This rule makes it mandatory that 50% of all China Shipping vessels that call in the San Pedro Bay use AMP as of that date. The Port of Los Angeles has no authority to provide you with a waiver beyond that date that would be inconsistent with the CARB rule. Compliance with the rule must be demonstrated through annual reports submitted to CARB. The Port of Los Angeles expects its customers to be ready for the CARB rule and, as the effective date draws closer, it is anticipated that CARB will be coordinating with shipping lines through notifications and workshops to ensure the same.

The second issue is compliance with the EIR. The ASJ required the Port of Los Angeles to reconsider Permit No. 999 and incorporate the environmental measures that resulted from the EIR. I am attaching a draft MOU, which we contemplate, would be signed by you on behalf of China Shipping (North America) Holding Co., Ltd. It incorporates the mitigation plan measures into Permit No. 999. This does not preclude the Port of Los Angeles from granting additional temporary waivers from the Permit.



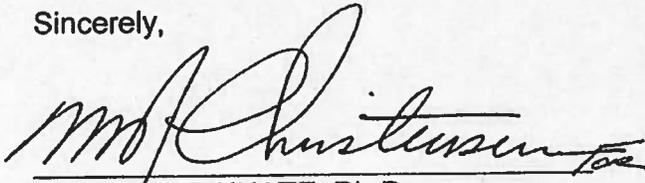
Mr. Zhang Bing

Page 2

We are willing to extend the term of the Temporary Waiver from August 20, 2012 to June 30, 2013. Other terms and conditions of the December 20, 2011 letter remain the same. In addition, China Shipping agrees that the MOU would be executed by September 30, 2012 as a condition of the extension.

Please sign the two original letters. Please retain one copy for your files and return the other copy to this office. We appreciate the support of China Shipping's business at the Port of Los Angeles. We value the relationship between China Shipping and the Port of Los Angeles.

Sincerely,



GERALDINE KNATZ, Ph.D.  
Executive Director

ACCEPTED:

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ZHANG BING  
President  
China Shipping (North America) Holding Co., Ltd.

GK/KM:cl

cc: Chris Cannon, EMD-POLA  
Jack Hedge, RED-POLA



425 S. Palms Verdes Street Post Office Box 161 San Pedro, CA 90733-0161 TEL/TDD 310 SEA-PORT www.portoflosangeles.org

Antonio R. Villaraigosa Mayor, City of Los Angeles  
Board of Harbor Commissioners  
Geraldine Knatz, Ph.D. Executive Director  
Cindy Misczkowski President  
David Arlan Vice President  
Robin M. Kramer  
Douglas P. Krause  
Sung Won Sohn, Ph.D.

August 20, 2012

Mr. Zhang Bing  
President  
China Shipping (North America) Holding Co., Ltd.  
11 Philips Parkway  
Montvale, NJ 07645

Dear Zhang Bing:

**SUBJECT: TEMPORARY WAIVER OF AMP REQUIREMENT FOR PERMIT 999**

We have received your request to extend the temporary waiver of Alternative Maritime Power (AMP) requirements under Permit No. 999 from August 15, 2012 through the end of 2014. Your existing temporary waiver granted for a period of eight months beginning December 15, 2011, to accommodate China Shipping (North America) Holding Co., Ltd. (China Shipping's) decision to deploy 9,600 TEU vessels into the trade lane, is due to expire on August 14, 2012.

We must remind you that the California Air Resources Board (CARB) rule on AMP will take effect on January 1, 2014. This rule will require 50% of all China Shipping vessel calls in the San Pedro Bay to use AMP. Since the Port of Los Angeles (POLA) has no authority to grant a waiver to compliance with State regulations, we cannot in any case waive AMP requirements after the January 1, 2014, CARB rule commencement date.

However in order to facilitate ongoing China Shipping permit discussions, POLA agrees to extend the Temporary Waiver of AMP requirement from August 14, 2012 to October 31, 2012. In that time, both parties will work to resolve any issues related to incorporating the Operating Environmental Compliance Plan into Permit No. 999. As part of these discussions, POLA will provide a comparison of Environmental Impact Report (EIR) mitigation requirements for the POLA TraPac, China Shipping, and APL projects, as well as the Port of Long Beach Middle Harbor Redevelopment Project. As you know, California law requires POLA, as Lead Agency under the California Environmental Quality Act, to ensure that mitigation measures certified in an EIR for a terminal are complied with as part of its construction and operations.



Mr. Zhang Bing

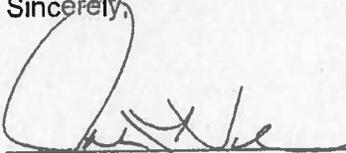
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Once the Operating Environmental Compliance Plan has been agreed to by China Shipping and POLA and brought to our board for approval, we can work together to determine a mutually acceptable date for any further extension of the Temporary Waiver.

Please sign the two original letters. Please retain one copy for your files and return the other copy to this office. We appreciate the support of China Shipping's business at the Port of Los Angeles. We value the relationship between China Shipping and the Port of Los Angeles.

We continue to appreciate and support China Shipping's business at POLA. Please let me know if you have any questions.

Sincerely,



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GERALDINE KNATZ, Ph.D.  
Executive Director

ACCEPTED:

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ZHANG BING  
President  
China Shipping (North America) Holding Co., Ltd.

GK/KM:cl



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Antonio R. Villaraigosa Mayor, City of Los Angeles  
Board of Harbor Commissioners  
Geraldine Knatz, Ph.D. Executive Director  
Cindy Misczkowski President  
David Arlan Vice President  
Robin M. Kramer Douglas P. Krause Sung Won Sohn, Ph.D.

October 18, 2012

Mr. Zhang Bing  
President  
China Shipping (North America) Holding Co., Ltd.  
11 Philips Parkway  
Montvale, NJ 07645

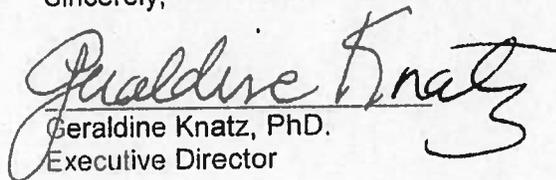
Dear Zhang Bing:

**SUBJECT: TEMPORARY WAIVER OF AMP REQUIREMENT FOR PERMIT 999**

Pursuant to our letter of August 20, 2012, the temporary waiver of Alternative Maritime Power (AMP) requirements under Permit No. 999 will be extended from October 31, 2012 to December 31, 2013.

The Port of Los Angeles understands that China Shipping will replace the 8,500 TEU vessels that presently call at the terminal with 10,000 TEU vessels that are AMP compliant. The goal of this extension is to promote increased trade at the terminal in the interim.

Sincerely,

  
Geraldine Knatz, PhD.  
Executive Director

ACCEPTED:

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ZHANG BING  
President  
China Shipping (North America) Holding Co., Ltd.

GK/KM:cj

# **EXHIBIT B**

**Action Items Resulting from Meeting Held November 9, 2011**  
**Outstanding Harbor Department Responsibilities for China Shipping EIR Mitigation Measures**

**General:**

**Lack of signed lease recognizing EIR requirements-** China Shipping has not signed a lease incorporating the requirements of the EIR. They are still operating under a lease containing the requirements of the ASJ.

**Action Items:**

- Upon completion of all other action items below, Kathryn McDermott to coordinate with Chris Bobo to request the Board to terminate the ASJ requirements and impose the EIR requirements.  
– **Due within 120 days of completion of last action item below**

**Effective compliance date for mitigation measures-**compliance dates may need to be modified from the explicit calendar dates in the EIR based on the fact that China Shipping has not signed a lease. A decision on compliance dates is important so that the true timeline for the measures described below can be made available. The action items described in items 1-5 below should continue to be pursued with the understanding that compliance dates may be adjusted based on the results of the action items described directly below

**Action Items:**

- Laura Masterson to research the EIR, including baseline and throughput assumptions, and provide a recommendation for an effective compliance date scheme – **Due 1/31/2012**
- Upon completion of research, EMD to consult with Chris Bobo on effective compliance date scheme and effective compliance dates for each individual measure – **Due 2/28/2012**

EMD to update all applicable mitigation measures with the new compliance dates and notify other departments/divisions – **Due 3/15/2012**

**Agenda Items:**

1. **Terminal equipment air quality standards (MM AQ-15, 16, 17) – sharing of equipment between China Shipping and Yang Ming and how China Shipping can comply in light of sharing**

**Notes:**

- All yard tractors used within the two terminals are LPG. Therefore, the obligation of China Shipping vs. Yang Ming to comply with the measures is not currently an issue as all tractors are in compliance with mitigation measure through 2014
- Engine standard mitigation measures requirement of all Tier 4 yard tractors starting in 2015. The LPGs currently in operation at the terminals will not comply with those standards.

- Terminal equipment is owned by WBCT. They are in control of what equipment is bought, not China Shipping itself.

**Action Items:**

- Eric Caris to schedule a meeting (including EMD AQ/CEQA staff) with WBCT to discuss the possibility of an agreement for the future purchase of equipment that will comply with the mitigation measures- Due 1/15/2012
- Eric Caris to request an inventory of terminal equipment currently onsite (other than yard tractors) and confirm with WBCT that all yard tractors used at China Shipping terminal are LPG - Due 1/31/2012

**2. LNG Trucks (MM AQ-20) – inadequacy of current LNG fleet to meet mitigation requirements of various projects (China Shipping, SCIG, ICTF) coming online in the near future.**

**Notes:**

- Use of LNG trucks will be very difficult to control due to the many types of truck moves that happen in a container terminal
- China Shipping shares trucks with Evergreen. This will complicate the use of LNG trucks at China Shipping?

**Action Items:**

- Tim DeMoss to investigate and report on the percentage of moves in the China Shipping terminal currently completed using LNG trucks – Due 1/31/2012
- Kevin Maggay to send out a timeline with compliance milestones for the three projects to identify critical timeframe for shortfalls in the existing fleet – Due 1/31/2012
- Kathryn McDermott to set up a meeting with China Shipping to discuss the possibility of giving preference to LNG truck companies – Due 3/31/2012

**3. Aesthetics (MM AES-3) – Beautification of John S. Gibson and Pacific, acquisition of buildings and billboard and undergrounding of utilities**

**Notes:**

- Feasibility study on undergrounding of utilities nearly completed
- Negotiations for one of the properties was conducted in 2005
- General beautification of Gibson and Pacific has been implemented

**Action Items:**

- Regner Globus to investigate and report on the status/history of property acquisition negotiations– Due 1/31/2012
- Chris Bobo to determine if re-initiating negotiations is required – Due 2/15/2012

- Dave Walsh to provide cost estimate to underground utilities along Front Street. – **Due within 15 days of release of final estimate**

**4. Traffic Mitigation Measures – many measures have not been completed/are not planned and many are required for implementation by 2015**

**Notes:**

- Many of these measures do not seem to have anything to do with China Shipping
- Is there a way to prove that they are no longer needed or effectively been accomplished with other projects?

**Action Items:**

- Kerry Cartwright, in coordination with Dave Walsh, to determine the need for each transportation measure based on the assumptions used in the analysis in relation to improvements that have already been made to date and current project-related traffic forecasts (due to changes in cargo throughput) compared to EIR forecasts – **Due 3/31/2012**
- Dave Walsh to provide list of which transportation mitigation measures are either completed, in construction , or in design **Due 1/31/2012**

**5. China Shipping responsibilities that require support from the Harbor Department**

**a. Electric RTGs (MM AQ-17) – required electrification of RTGs**

**Notes:**

- Current holdup on demonstration project is clearance from Building and Safety
- There is no consensus on how China Shipping will meet this requirement (ERTG vs. RMG) so Harbor Department has not designed

**Action Items:**

- Dave Walsh to forward clearance from Building and Safety when received so that a demonstration project can move forward – **Due within 15 days after clearance received**
- Once clearance is received from Building and Safety, Kevin Maggay to coordinate ERTG demonstration project for duration of one year – **Due within 90 days after clearance received**
- Determine feasibility of full implementation of ERTG or retrofit of facility with RMG – **upon completion of ERTG demonstration**

**b. Electric yard tractor pilot program (AQ-17) – one year electric yard tractor pilot program**

**Action Items:**

- Kevin Maggay to facilitate pilot program work plan and start– **Due 3/31/2012**

**c. AMP (MM AQ-9) – 100% of ship calls utilizing AMP**

**Notes:**

- All built wharf is AMP-capable
- All planned wharf will be constructed with AMP capability
- Currently AMPing approximately 70% of ship calls

**Action Items:**

- Business Development to track compliance with “Temporary Waiver of AMP Requirement for Permit No. 99”, dated December 20, 2011 – **Required 8/2012 through 12/2013**

# **EXHIBIT C**

## CHINA SHIPPING MITIGATION MEASURES BY SOURCE

### AMENDED STIPULATED JUDGMENT (2004)

1. Prepare an EIR for all three phases of the project and adopt all mitigation measures that are feasible as required by CEQA.
2. Any disputes as to feasibility will be resolved by arbitration, such arbitration is binding as to alternative marine power (AMP or shorepower). Yard tractors will use alternate fuels as defined by CARB, 100% by the end of 2004.
3. The Port will install low-profile cranes.
4. The Port will provide for AMP at berths 100 and 102 (Note: the project is for berths 97-109).
5. 70 % of ship calls by China Shipping at berths 97-109 will use AMP by July 1, 2005. Note: the current CARB regulation, enacted in 2007, requires 50% shorepower use at CA ports by 2014, 70% by 2017 and 80 % by 2020. POLA claims to have 24 shorepower installations now.
6. Permit 999 (with China Shipping) will be amended to include the mitigation measures in Section VIII of the ASJ.
7. POLA will pay \$50 million for mitigation.
8. POLA shall make quarterly reports to Petitioners regarding compliance with the Section VIII mitigation measures. Note: This has not occurred since 2009.

### 2008 EIR MEASURES PROPOSED TO BE REVISED

1. Shorepower for 100% of vessels from January 1, 2011.
2. Vessel speed reduction from 40 nm out, beginning 2009.
3. LPG yard tractors using alternative fuel with no more than 0.015 g/hp-hr PM by January 1, 2015.
4. Railyard emissions standards for yard equipment must meet US EPA Tier 4 standards
5. Terminal yard equipment: rubber-tired cranes shall be electric, topicks shall have the cleanest available NOX alternative fueled engines meeting 0.015 g/hp-hr for PM, by 2014 all terminal equipment other than yard tractors, RTGs and topicks shall meet US EPA Tier 4 standards. Also requires a one-year pilot project for electric yard tractors, and if successful half of the yard tractors must be replaced with electric tractors within 5 years. Note: the POLB Middle Harbor project has 100% electric yard tractors.
6. LNG-powered drayage trucks 50% by 2013, 70% through 2017 and 100% in 2018 and thereafter. Note: compliance is now around 7%.
7. Throughput tracking to verify EIR assumptions; new mitigation measures may be applied. Note: actual throughput has been far less than anticipated.
8. Noise walls and soundproofing.
9. Modification of certain intersections near the project.