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The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

LIGHTHOUSE RESOURCES INC., et al.,  
Plaintiffs,  
and  
BNSF RAILWAY COMPANY,  
Plaintiff-Intervenor,  
v.  
JAY INSLEE, et al.,  
Defendants,  
and  
WASHINGTON ENVIRONMENTAL  
COUNCIL, et al.,  
Defendant-Intervenors.

NO. 3:18-cv-05005-RJB  
  
DEFENDANTS' ANSWER TO  
PLAINTIFFS' COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

**GENERAL DENIAL**

Defendants Governor Jay Inslee, Director Maia Bellon, and Hilary Franz,  
Commissioner of Public Lands, by and through their undersigned counsel, submit the  
following Answer to the Lighthouse Resources Inc., Lighthouse Products LLC, LHR  
Infrastructure, LLC, LHR Coal, LLC, and Millennium Bulk Terminals-Longview, LLC  
(collectively, "Plaintiffs") Complaint for Declaratory and Injunctive Relief (Complaint).  
Except as expressly admitted herein, Defendants deny each and every allegation contained in

1 Plaintiffs' Complaint and deny that Plaintiffs are entitled to any of the relief requested.

2 Defendants respond to each numbered paragraph of Plaintiffs' Complaint as follows:

3 **I. INTRODUCTION**

4 1. This paragraph states a legal conclusion to which no response is required. To  
5 the extent a response is required, Defendants deny any allegations inconsistent with the  
6 language of the U.S. Constitution as interpreted in case law.

7 2. This paragraph states a legal conclusion to which no response is required. To  
8 the extent a response is required, Defendants deny any allegations inconsistent with the  
9 language of the U.S. Constitution as interpreted in case law.

10 3. The allegations in paragraph 3 consist of Plaintiffs' characterization of their  
11 lawsuit, to which no response is required. To the extent a response is required, Defendants  
12 deny the allegations.

13 4. Defendant Bellon admits that she denied a request for certification under  
14 section 401 of the Clean Water Act by Millennium Bulk Terminals-Longview (Millennium)  
15 for construction and operation of a coal export terminal on the banks of the Columbia River in  
16 Cowlitz County, Washington. Defendant Franz admits that her predecessor in office,  
17 Commissioner of Public Lands Peter Goldmark, denied a request by Millennium for a sublease  
18 of state-owned aquatic lands that Millennium sought for the purpose of constructing a coal  
19 export terminal on the Columbia River in Cowlitz County, Washington. Defendant Franz  
20 further admits that she denied without prejudice a request by Millennium for authorization to  
21 construct docks and other facilities on state-owned aquatic lands under an existing lease for the  
22 purpose of operating a coal export terminal on the Columbia River in Cowlitz County,  
23 Washington. Defendants deny the remainder of this paragraph.

24 5. Defendants lack information sufficient to form a belief as to the truth of the  
25 allegations in paragraph 5 and, on that basis, deny the allegations.  
26

1           6.       Defendants admit that there are coal reserves located in the United States. With  
2 respect to the remaining allegations in paragraph 6, the Defendants are without sufficient  
3 information to form a belief as to the truth or falsity of those allegations and, on that basis,  
4 deny the allegations.

5           7.       Defendants admit that Millennium proposed exporting coal to Asia. With  
6 respect to the remaining allegations in paragraph 7, the Defendants are without sufficient  
7 information to form a belief as to the truth or falsity of those allegations and, on that basis,  
8 deny the allegations.

9           8.       Defendants admit that Millennium proposed to develop a coal export terminal  
10 on the banks of the Columbia River in Cowlitz County, Washington, at an existing industrial  
11 site. Defendants further admit that, according to Millennium, the facility if built would  
12 generate jobs and tax revenue. With respect to the remaining allegations in paragraph 8, the  
13 Defendants are without sufficient information to form a belief as to the truth or falsity of those  
14 allegations and, on that basis, deny the allegations.

15           9.       Defendant Bellon admits that she denied a request for certification under  
16 section 401 of the Clean Water Act by Millennium for construction and operation of a coal  
17 export terminal on the banks of the Columbia River in Cowlitz County, Washington.  
18 Defendant Franz admits that her predecessor in office, Commissioner of Public Lands Peter  
19 Goldmark, denied a request by Millennium for a sublease of state-owned aquatic lands that  
20 Millennium sought for the purpose of constructing a coal export terminal on the Columbia  
21 River in Cowlitz County, Washington. Defendant Franz further admits that she denied without  
22 prejudice a request by Millennium for authorization to construct docks and other facilities on  
23 state-owned aquatic lands under an existing lease for the purpose of operating a coal export  
24 terminal on the Columbia River in Cowlitz County, Washington. Defendants deny the  
25 remainder of this paragraph.

26           10.       Deny.

1 11. Deny.

2 **II. JURISDICTION AND VENUE**

3 12. This paragraph asserts legal conclusions to which no response is required. To  
4 the extent a response is required, Defendants deny that this court has jurisdiction over  
5 Plaintiffs' claims.

6 13. This paragraph asserts legal conclusions to which no response is required. To  
7 the extent a response is required, Defendants deny that the court has jurisdiction over  
8 Plaintiffs' claims.

9 14. Paragraph 14 asserts legal conclusions to which no response is required. To the  
10 extent a response is required, Defendants deny that Plaintiffs are entitled to the relief sought.

11 15. This paragraph asserts legal conclusions to which no response is required. To  
12 the extent a response is required, Defendants deny that venue is proper in this court.

13 **III. PARTIES**

14 16. Defendants lack information sufficient to form a belief as to the truth of the  
15 allegations in paragraph 16 and therefore deny the same.

16 17. Defendants lack information sufficient to form a belief as to the truth of the  
17 allegations in paragraph 17 and therefore deny the same.

18 18. Defendants lack information sufficient to form a belief as to the truth of the  
19 allegations in paragraph 18 and therefore deny the same.

20 19. Defendants admit that Millennium proposed to develop a coal export terminal  
21 on the banks of the Columbia River in Cowlitz County, Washington, and that Millennium  
22 proposed to export coal to Asia. With respect to the remaining allegations in paragraph 19, the  
23 Defendants are without sufficient information to form a belief as to the truth or falsity of those  
24 allegations and, on that basis, deny the allegations.

25 20. Defendants lack information sufficient to form a belief as to the truth of the  
26 allegations in paragraph 20 and therefore deny the same.

1 21. Admit.

2 22. Admit.

3 23. Admit.

4 **IV. FACTUAL ALLEGATIONS**

5 24. Admit.

6 25. Defendants lack information regarding paragraph 25 and therefore deny the  
7 same.

8 26. Defendants lack information regarding paragraph 26 and therefore deny the  
9 same.

10 27. Defendants lack information regarding paragraph 27 and therefore deny the  
11 same.

12 28. Defendants lack information regarding paragraph 28 and therefore deny the  
13 same.

14 29. Defendants lack information regarding paragraph 29 and therefore deny the  
15 same.

16 30. Defendants lack information regarding paragraph 30 and therefore deny the  
17 same.

18 31. Defendants lack information regarding paragraph 31 and therefore deny the  
19 same.

20 32. Admit the first sentence. Defendants lack information regarding the remainder  
21 of this paragraph and therefore deny the same.

22 33. Defendants lack information regarding paragraph 33 and therefore deny the  
23 same.

24 34. Defendants lack information regarding paragraph 34 and therefore deny the  
25 same.

1           35.    Defendants lack information regarding paragraph 35 and therefore deny the  
2 same.  
3           36.    Defendants lack information regarding paragraph 36 and therefore deny the  
4 same.  
5           37.    Defendants lack information regarding paragraph 37 and therefore deny the  
6 same.  
7           38.    Defendants lack information regarding paragraph 38 and therefore deny the  
8 same.  
9           39.    Defendants lack information regarding paragraph 39 and therefore deny the  
10 same.  
11          40.    Defendants lack information regarding paragraph 40 and therefore deny the  
12 same.  
13          41.    Defendants lack information regarding paragraph 41 and therefore deny the  
14 same.  
15          42.    Defendants lack information regarding paragraph 42 and therefore deny the  
16 same.  
17          43.    Defendants lack information regarding paragraph 43 and therefore deny the  
18 same.  
19          44.    Defendants lack information regarding paragraph 44 and therefore deny the  
20 same.  
21          45.    Defendants lack information regarding paragraph 45 and therefore deny the  
22 same.  
23          46.    Defendants lack information regarding paragraph 46 and therefore deny the  
24 same.  
25          47.    Defendants lack information regarding paragraph 47 and therefore deny the  
26 same.

1 48. Defendants lack information regarding paragraph 48 and therefore deny the  
2 same.

3 49. Defendants lack information regarding paragraph 49 and therefore deny the  
4 same.

5 50. Defendants lack information regarding paragraph 50 and therefore deny the  
6 same.

7 51. Defendants lack information regarding paragraph 51 and therefore deny the  
8 same.

9 52. Defendants lack information regarding paragraph 52 and therefore deny the  
10 same.

11 53. Defendants lack information regarding paragraph 53 and therefore deny the  
12 same.

13 54. Defendants lack information regarding the first sentence of paragraph 54 and  
14 therefore deny the same. Admit the second sentence.

15 55. Defendants lack information as to what tax abatement, rail infrastructure  
16 improvements, assistance to streamline permitting, and job training incentives Plaintiffs are  
17 referring to in this paragraph and therefore deny the allegations in this paragraph.

18 56. Defendants lack information regarding paragraph 56 and therefore deny the  
19 same.

20 57. Defendants lack information regarding paragraph 57 and therefore deny the  
21 same.

22 58. Defendants lack information regarding paragraph 58 and therefore deny the  
23 same.

24 59. Defendants admit the state of Oregon denied a permit for a coal export proposal  
25 at the Port of Morrow. Defendants deny the remainder of this paragraph.  
26

1           60. Defendants lack information sufficient to form a belief as to the truth of  
2 paragraph 60 and therefore deny the same.

3           61. Admit that the Millennium site has been in industrial use since 1941.  
4 Defendants lack information regarding the remainder of this paragraph and therefore deny the  
5 same.

6           62. Defendants admit that Millennium currently handles up to 150,000 metric tons  
7 of coal per year. Defendants lack information sufficient to form a belief as to the truth of the  
8 remainder of paragraph 62 and therefore deny the same.

9           63. Admit that Northwest Alloys, Inc., holds a 30-year aquatic lands lease term with  
10 the Washington State Department of Natural Resources. The terms of the lease speak for  
11 themselves. Defendants deny Plaintiffs' interpretation of the terms of the lease.

12           64. Defendants deny this paragraph to the extent it is inconsistent with the terms of  
13 the lease.

14           65. For the first sentence of paragraph 65, Defendants admit that Millennium  
15 purchased the facility assets from Chinook Ventures in January 2011, and now operates on a  
16 ground lease with Northwest Alloys, Inc. As to the second sentence of paragraph 65,  
17 Defendants lack information regarding the terms of Millennium's agreement with Northwest  
18 Alloys. Defendants admit that Millennium has engaged in environmental remediation at the  
19 site subject to regulatory oversight by Ecology.

20           66. Defendants lack information regarding the truth of this paragraph and therefore  
21 deny the same.

22           67. Admit.

23           68. Admit that the Millennium site is located on the banks of the Columbia River  
24 and that the Columbia River shipping channel was recently deepened to accommodate larger  
25 draft vessels. Defendants lack information sufficient to form a belief as to the truth of the  
26 remainder of this paragraph and therefore deny the same.



1           69. Admit that Millennium’s proposed coal export terminal was designed for and  
2 would have had a maximum annual throughput capacity of up to 44 million metric tons of coal  
3 per year at full build-out. As to the remainder of paragraph 69, Defendants lack information  
4 sufficient to form a belief as to its truth and therefore deny the same.

5           70. Admit.

6           71. Defendants admit that the site has been undergoing environmental cleanup due  
7 to its use for many years as an aluminum smelter, and that until the cleanup is completed  
8 further development is limited. Defendants lack information regarding the remainder of this  
9 paragraph and therefore deny the same.

10          72. Defendants admit that, according to Millennium, the proposed coal export  
11 facility would generate jobs. Defendants lack information sufficient to admit or deny the  
12 remainder of this paragraph, and therefore deny the same.

13          73. Defendants admit that, according to Millennium, the proposed coal export  
14 facility would generate tax revenue. Defendants lack information regarding the remainder of  
15 this paragraph and therefore deny the same.

16          74. Defendants lack information sufficient to admit or deny this paragraph, and  
17 therefore deny the same.

18          75. Defendants lack information sufficient to admit or deny this paragraph, and  
19 therefore deny the same.

20          76. Defendants lack information sufficient to admit or deny this paragraph, and  
21 therefore deny the same.

22          77. Defendants lack information sufficient to admit or deny this paragraph, and  
23 therefore deny the same.

24          78. Defendants lack information sufficient to admit or deny this paragraph, and  
25 therefore deny the same.  
26

1           79. Defendants lack information sufficient to admit or deny this paragraph, and  
2 therefore deny the same.

3           80. Deny.

4           81. Admit that Governor Inslee co-authored a 2007 book titled *Apollo's Fire:  
5 Igniting America's Clean Energy Economy*, which speaks for itself. Admit that the book  
6 includes the language quoted in paragraph 81, but deny any remaining allegations in  
7 paragraph 81. Defendants deny that the book is relevant to this proceeding.

8           82. Paragraph 82 purports to characterize pages 200–201 of the book titled *Apollo's  
9 Fire: Igniting America's Clean Energy Economy*, which speaks for itself. Defendants admit  
10 that the book includes the language quoted in paragraph 82, and deny any remaining  
11 allegations in paragraph 82. Defendants deny that the book is relevant to this proceeding.

12           83. Paragraph 83 purports to characterize an INSIDECLIMATE NEWS article, dated  
13 November 26, 2012. The article speaks for itself. To the extent that a response is required,  
14 Defendants admit that the article includes the language quoted in paragraph 83, and deny any  
15 remaining allegations in paragraph 83. Defendants deny that the article is relevant to this  
16 proceeding.

17           84. This paragraph quotes from Defendant Inslee's inaugural address, which speaks  
18 for itself. To the extent a response is required, Defendants admit that the speech contains the  
19 quoted phrases, but deny all remaining allegations in paragraph 84. Defendants deny that the  
20 speech is relevant to this proceeding.

21           85. Paragraph 85 purports to characterize a THINKPROGRESS news article, dated  
22 January 22, 2013. The article speaks for itself. To the extent that a response is required,  
23 Defendants admit that the article cited in paragraph 85 includes the language quoted in  
24 paragraph 85 and deny any remaining allegations. Defendants deny that the article is relevant  
25 to this proceeding.  
26

1           86. Paragraph 86 purports to characterize a YouTube video, dated May 20, 2014.  
2 The video speaks for itself. To the extent that a response is required, Defendants admit that the  
3 video includes the language quoted in paragraph 86 and deny any remaining allegations in  
4 paragraph 86. Defendants deny that the video is relevant to this proceeding.

5           87. This paragraph purports to quote from the report of a press conference on TVW.  
6 The report speaks for itself. To the extent a response is required, Defendants admit that the  
7 quoted statements appear in the report and deny any remaining allegations in this paragraph.  
8 Defendants deny that the quoted statements are relevant to this proceeding.

9           88. This paragraph purports to quote from a YouTube video of a Town Hall  
10 meeting. This video speaks for itself. To the extent that a response is required, Defendants  
11 admit that the quoted statements appear in the video and deny any remaining allegations in this  
12 paragraph. Defendants deny that these statements are relevant to this proceeding.

13           89. This paragraph purports to characterize a report on TVW of a Town Hall  
14 meeting. This report speaks for itself. To the extent a response is required, Defendants admit  
15 that the quoted statements appear in the report and deny any remaining allegations in this  
16 paragraph. Defendants deny that these quoted statements are relevant to this proceeding.

17           90. Defendants deny that Defendant Inslee has a policy goal of stopping coal  
18 exports. Defendants further deny that any such policy goal is being implemented through the  
19 Department of Ecology.

20           91. Admit that Governor Inslee appointed Maia Bellon as the Director of the  
21 Washington State Department of Ecology in February 2013. Defendants deny the second  
22 sentence of paragraph 91.

23           92. Admit that Director Maia Bellon spoke during a panel discussion in  
24 November 2013. Defendants admit that the TVW video cited includes the language quoted in  
25 paragraph 92 and deny any remaining allegations in this paragraph. Defendants deny that the  
26 quoted statements are relevant to this proceeding.

1           93. Admit that the Washington State Department of Ecology (Ecology) published  
2 its Environmental Impact Statement (EIS) for the Millennium Bulk Terminal in April 2017,  
3 and that Ecology’s official Twitter account tweeted four key findings from the EIS in April  
4 2017. Defendants deny the remainder of paragraph 93.

5           94. Admit that Ecology accurately tweeted the finding of the EIS that the project  
6 would increase global greenhouse gas emissions by approximately 2 million tons per year.

7           95. Admit that the April 2017 tweet includes the language quoted in paragraph 95.  
8 Defendants deny the remainder of paragraph 95.

9           96. Paragraph 96 purports to characterize a September 7, 2016, THE LENS news  
10 article, and a *46th District Democrats Legislative & Statewide Questionnaire*. The article and  
11 questionnaire speak for themselves. To the extent that a response is required, Defendants admit  
12 that the questionnaire cited in paragraph 96 includes the language quoted, and deny all  
13 remaining allegations in paragraph 96.

14           97. Paragraph 97 purports to characterize information on Commissioner Hilary  
15 Franz’s campaign website. The website speaks for itself; no response is required. Defendants  
16 deny that the campaign website is relevant to this proceeding.

17           98. Deny.

18           99. Deny.

19           100. Deny.

20           101. Admit.

21           102. Defendants lack information regarding this paragraph and therefore deny the  
22 same. Defendants deny that events in Oregon are relevant to this proceeding.

23           103. Defendants lack information regarding this paragraph and therefore deny the  
24 same.

1 104. Defendants deny these allegations to the extent they are against the state of  
2 Washington. Defendants lack information regarding the remainder of this paragraph and  
3 therefore deny the same.

4 105. Defendants lack information regarding this paragraph and therefore deny the  
5 same.

6 106. Defendants lack information regarding the first sentence of this paragraph and  
7 therefore deny the same. Defendants deny the second sentence.

8 107. This paragraph purports to characterize a message from Governor Kitzhaber to  
9 Defendant Inslee from 2012. Defendants lack information regarding what message Plaintiffs  
10 are referring to in this paragraph and therefore deny the allegations in this paragraph.

11 108. Admit that Governor Inslee co-authored a letter to the chair of the White House  
12 Council on Environmental Quality that contains the quoted statements. Defendants deny any  
13 remaining allegations in this paragraph.

14 109. Deny.

15 110. Admit.

16 111. Defendants lack information regarding the allegations in this paragraph, and  
17 therefore it is denied. Defendants deny that events in Oregon are relevant to this proceeding.

18 112. Defendants lack information regarding the allegations in this paragraph, and  
19 therefore it is denied. Defendants deny that events in Oregon are relevant to this proceeding.

20 113. Defendants lack information regarding this paragraph, and therefore it is denied.  
21 Defendants deny that events in Oregon are relevant to this proceeding.

22 114. Defendants lack information regarding this paragraph, and therefore it is denied.  
23 Defendants deny that events in Oregon are relevant to this proceeding.

24 115. Admit that Governor Kitzhaber resigned on or about February 18, 2015.  
25 Defendants deny the remainder of this paragraph.

26 116. Admit.

1 117. Admit.

2 118. Admit.

3 119. Admit that, after a document was discovered that showed that Millennium had  
4 deliberately misled regulators regarding the size of its proposed facility, Millennium withdrew  
5 its permit application and began a new process that included preparation of an EIS.

6 120. Paragraph 120 purports to characterize memorandums, both of which speak for  
7 themselves and are the best evidence of their contents. To the extent a response is required,  
8 Defendants deny any characterizations contrary to the plain language, meaning, and context of  
9 the memorandums. On information and belief, Defendants allege that the memorandum  
10 referred to in this paragraph was amended in September 2013.

11 121. Admit the first sentence of paragraph 121. The second sentence of  
12 paragraph 121 purports to characterize a letter, which speaks for itself and is the best evidence  
13 of its contents. Defendants admit that the letter cited in paragraph 121 includes the language  
14 quoted in paragraph 121.

15 122. Deny.

16 123. Defendants lack information regarding the allegations in paragraph 123 and  
17 therefore deny the same.

18 124. As to the first sentence, Defendants admit that the co-lead agencies, Cowlitz  
19 County and Ecology, jointly decided that the EIS would evaluate impacts beyond the State's  
20 borders, including impacts from lifecycle greenhouse gas emissions and transportation that  
21 occurs outside the project area and the State of Washington. Defendants deny the second  
22 sentence of this paragraph.

23 125. Admit that the U.S. Army Corps of Engineers undertook a different scope of  
24 review under NEPA than Ecology and the County took under SEPA. Defendants deny any  
25 remaining allegations in this paragraph.

1           126. This paragraph purports to characterize a Memorandum of Record by the Corps,  
2 which speaks for itself. Defendants deny all allegations to the extent they are inconsistent with  
3 the Memorandum.

4           127. Deny.

5           128. Paragraph 128 purports to characterize an interview given by Defendant Bellon  
6 on Inside Olympia, a TV show. The interview speaks for itself. Defendants deny all allegations  
7 inconsistent with the text of the interview. Defendants further deny that the interview is  
8 relevant to this proceeding.

9           129. Paragraph 129 purports to characterize the same interview referenced in  
10 paragraph 128, which speaks for itself. Defendants deny all allegations inconsistent with the  
11 text of the interview and further deny that the quoted statements are relevant to this proceeding.

12           130. Deny.

13           131. Deny.

14           132. This paragraph purports to characterize the draft and final EIS's for the  
15 Millennium coal export project, as well as comment letters. Those documents speak for  
16 themselves. Defendants deny all allegations inconsistent with the text of the documents.

17           133. This paragraph purports to characterize a technical report from volume III of the  
18 final EIS. The report speaks for itself. Defendants deny all allegations inconsistent with the  
19 report and the text of the EIS.

20           134. Admit that Defendant Bellon denied a water quality certification under  
21 section 401 of the Clean Water Act to Millennium due to the project's significant, adverse,  
22 unavoidable, environmental impacts plus Millennium's failure to demonstrate reasonable  
23 assurance of compliance with state water quality standards. Defendants deny the remainder of  
24 this paragraph.

1           135. This paragraph purports to characterize Ecology’s section 401 denial, Order  
2 No. 15417. That document speaks for itself. Defendants deny all allegations inconsistent with  
3 the text of the document.

4           136. The first sentence of paragraph 136 purports to characterize an interview given  
5 by Defendant Bellon on Inside Olympia, a TV show. That interview speaks for itself.  
6 Defendants deny all allegations inconsistent with the content of the interview. Defendants deny  
7 the second sentence of this paragraph.

8           137. This paragraph contains argument about an unrelated project and as such no  
9 response is required. To the extent a response is required, the allegations in this paragraph are  
10 denied.

11           138. This paragraph purports to characterize various documents authored by persons  
12 who are not defendants regarding a project that is not at issue in these proceedings. These  
13 documents speak for themselves. Defendants deny all allegations inconsistent with the text of  
14 the documents and further deny that they are relevant to this proceeding. On information and  
15 belief, Defendants allege that there are not any applications currently pending for projects at  
16 Barlow Point.

17           139. This paragraph contains argument about an unrelated project to which no  
18 response is required. To the extent a response is required, Defendants deny the allegations in  
19 this paragraph.

20           140. This paragraph also contains argument to which no response is required. To the  
21 extent a response is required, the allegation is denied.

22           141. Defendants lack information regarding this paragraph and therefore deny the  
23 same.

24           142. This paragraph contains argument about an unrelated project, to which no  
25 response is required. To the extent a response is required, the allegation is denied.  
26



1           143. This paragraph contains argument about an unrelated project, to which no  
2 response is required. To the extent a response is required, the allegation is denied.

3           144. Defendants lack information regarding this paragraph and therefore deny the  
4 same.

5           145. Defendants lack information regarding this paragraph and therefore deny the  
6 same.

7           146. Admit that Ecology did not conduct the SEPA review for the Port of Seattle  
8 project or comment on the Port's greenhouse gas analysis. Defendants deny the remainder of  
9 this paragraph.

10           147. Defendants admit that an EIS was issued for this project. Defendants lack  
11 information regarding the remainder of this paragraph and therefore deny the same.

12           148. This paragraph contains argument about an unrelated project to which no  
13 response is required. To the extent a response is required, the allegation is denied.

14           149. Defendants lack sufficient information to form a belief as to the truth of the  
15 allegations contained in this paragraph and therefore deny the same. Defendants affirmatively  
16 allege that Northwest Alloys, Inc., approached the Washington Department of Natural  
17 Resources (DNR) regarding a proposed sublease by letter dated October 28, 2010.

18           150. Defendants lack sufficient information to form a belief as to the truth of the  
19 allegations contained in this paragraph and therefore deny the same. To the extent that this  
20 paragraph references an October 18, 2010 email, Defendants deny all allegations that are  
21 inconsistent with said email.

22           151. Defendants lack sufficient information to form a belief as to the truth of the  
23 allegations contained in this paragraph and therefore deny the same.

24           152. Admit.  
25  
26

1 153. Defendants admit that four environmental groups sent a letter to DNR dated  
2 November 12, 2010. Defendants deny all allegations in this paragraph that are inconsistent  
3 with the November 12, 2010 letter.

4 154. Defendants lack sufficient information to form a belief as to the truth of the  
5 allegations contained in this paragraph and therefore deny the same.

6 155. Defendants admit that DNR denied the requested sublease by letter dated  
7 January 5, 2017.

8 156. Defendants admit that Northwest Alloys, Inc., and Millennium Bulk Terminals-  
9 Longview's repeated failures to provide requested financial information and other business  
10 documents were among the reasons for the sublease denial stated in the January 5, 2017 letter.  
11 Defendants deny all other allegations in this paragraph.

12 157. Defendants lack sufficient information to form a belief as to the truth of the  
13 allegations contained in this paragraph and therefore deny the same.

14 158. Defendants admit that Commissioner Franz assumed leadership of DNR in  
15 January 2017. Defendants admit that Commissioner Franz made statements quoted in THE  
16 DAILY NEWS on February 11, 2017. Defendants deny that the quoted statements are relevant to  
17 this proceeding.

18 159. This paragraph contains argument to which no response is required. To the  
19 extent a response may be required, Defendants deny all allegations in this paragraph.

20 160. This paragraph purports to characterize a ruling by the Cowlitz County Superior  
21 Court, which speaks for itself. Defendants deny all allegations inconsistent with the court's  
22 Order.

23 161. Admit.

24 162. Admit.

1 163. Defendants lack information as to what Lighthouse and Millennium are aware  
2 of, and therefore deny the first sentence of this paragraph. Defendants admit the second  
3 sentence.

4 164. Deny.

5 165. Deny.

6 166. Defendants admit that an increase in the rate of vessel accidents on the  
7 Columbia River was one of the reasons, among others, that Ecology denied the section 401  
8 certification. Defendants deny the remaining allegations in this paragraph.

9 167. Admit that Defendant Bellon mentioned her section 401 decision on Twitter due  
10 to the extensive public interest in the project. Admit further that Defendant Bellon has not  
11 mentioned other section 401 decisions on Twitter, but she has mentioned other types of  
12 regulatory decisions on Twitter.

13 168. Admit that Defendant Bellon “liked” tweets that approved of her decision.

14 169. Admit that the cited reference contains the quoted phrase. Defendants deny the  
15 remainder of this paragraph.

16 170. As to the first sentence of this paragraph, Defendants admit that the reference  
17 cited contains the quoted phrases. Defendants deny the second sentence of this paragraph.

18 171. This paragraph purports to characterize statements made by Defendant Inslee at  
19 a Town Hall event, which speak for themselves. To the extent a response is required,  
20 Defendants deny all allegations inconsistent with Defendant Inslee’s statements. Defendants  
21 deny that Defendant Inslee’s statements are relevant to these proceedings.

22 172. Deny.

23 173. Admit.

24 174. Defendants are without sufficient information to form a belief as to the truth of  
25 Millennium’s characterization of its plan and therefore deny the same. Defendants admit  
26 Millennium is not exempt from permitting or approval requirements.

1 175. This paragraph contains argument and legal conclusions to which no response is  
2 required. To the extent a response may be required, Defendants deny all allegations in this  
3 paragraph, with the exception that Defendants admit that any such export facility is subject to  
4 federal and state environmental review and permitting requirements.

5 176. This paragraph attempts to characterize the October 24, 2017 Memorandum  
6 from Commissioner Franz denying the proposed improvements. The Memorandum speaks for  
7 itself, and Defendants deny all allegations insofar as they are inconsistent with said  
8 Memorandum.

9 177. This paragraph attempts to characterize the October 24, 2017 Memorandum  
10 from Commissioner Franz denying the proposed improvements. The Memorandum speaks for  
11 itself, and Defendants deny all allegations insofar as they are inconsistent with said  
12 Memorandum.

13 178. Deny.

14 179. Admit.

15 180. Admit that Cowlitz County staff prepared a staff report that recommended  
16 approval of the shoreline permits, with conditions. The staff report speaks for itself.

17 181. Admit that the Cowlitz County Hearing Examiner issued a decision after a  
18 hearing in which he denied Millennium's application for a shoreline substantial development  
19 permit and a shoreline conditional use permit for the coal export project. His decision speaks  
20 for itself. Defendants deny all allegations inconsistent with the decision. Defendants further  
21 allege that the EIS was issued jointly by Ecology and Cowlitz County.

22 182. Defendants incorporate by reference their answer to the preceding paragraph.

23 183. Admit that the Cowlitz County Hearing Examiner denied Millennium's request  
24 for shoreline permits for the coal export project. His decision speaks for itself. Defendants  
25 deny the remainder of this paragraph.

26 184. Deny.

1           185. This paragraph refers to a letter written by Ecology to Millennium that speaks  
2 for itself. Defendants deny all allegations in this paragraph inconsistent with the text of the  
3 letter.

4           186. This paragraph refers to a letter written by Ecology to Millennium that speaks  
5 for itself. Defendants deny all allegations in this paragraph inconsistent with the text of the  
6 letter.

7           187. This paragraph refers to a letter written by Ecology to Millennium that speaks  
8 for itself. Defendants deny all allegations in this paragraph inconsistent with the text of the  
9 letter.

10           188. This paragraph refers to a letter written by Ecology to Millennium that speaks  
11 for itself. Defendants deny all allegations in this paragraph inconsistent with the text of the  
12 letter.

13           189. Deny.

14           190. Deny.

15           191. Deny.

16                           **V. LEGAL AND REGULATORY BACKGROUND.**

17           192. Defendants lack information regarding the allegations in this paragraph and  
18 therefore deny the same.

19           193. Defendants lack information regarding the allegations in this paragraph and  
20 therefore deny the same.

21           194. Defendants lack information regarding the allegations in this paragraph and  
22 therefore deny the same.

23           195. Defendants lack information regarding the allegations in this paragraph and  
24 therefore deny the same.

25           196. Defendants lack information regarding the allegations in this paragraph and  
26 therefore deny the same.

1 197. Defendants lack information regarding the allegations in this paragraph and  
2 therefore deny the same.

3 198. Defendants lack information regarding the allegations in this paragraph and  
4 therefore deny the same.

5 199. Defendants lack information regarding the allegations in this paragraph and  
6 therefore deny the same.

7 200. Defendants lack information regarding the allegations in this paragraph and  
8 therefore deny the same.

9 201. Defendants lack information regarding the allegations in this paragraph and  
10 therefore deny the same.

11 202. Defendants lack information regarding the allegations in this paragraph and  
12 therefore deny the same.

13 203. Defendants lack information regarding the allegations in this paragraph and  
14 therefore deny the same.

15 204. Defendants lack information regarding the allegations in this paragraph and  
16 therefore deny the same.

17 205. Defendants lack information regarding the allegations in this paragraph and  
18 therefore deny the same.

19 206. Admit.

20 207. Admit.

21 208. This paragraph asserts legal conclusions to which no response is required. To  
22 the extent a response is required, Defendants deny these allegations to the extent they are  
23 inconsistent with case law.

24 209. This paragraph asserts legal conclusions to which no response is required. To  
25 the extent a response is required, Defendants deny these allegations to the extent they are  
26 inconsistent with case law.

1           210. This paragraph asserts legal conclusions to which no response is required. To  
2 the extent a response is required, Defendants deny these allegations to the extent they are  
3 inconsistent with case law.

4           211. This paragraph purports to characterize the General Agreement on Tariffs and  
5 Trade (GATT), which speaks for itself. Defendants deny the allegations to the extent they are  
6 inconsistent with the GATT and/or cases interpreting it.

7           212. This paragraph purports to characterize the General Agreement on Tariffs and  
8 Trade (GATT), which speaks for itself. Defendants deny the allegations to the extent they are  
9 inconsistent with the GATT and/or cases interpreting it.

10           213. This paragraph purports to characterize the General Agreement on Tariffs and  
11 Trade (GATT), which speaks for itself. Defendants deny the allegations to the extent they are  
12 inconsistent with the GATT and/or cases interpreting it.

13           214. This paragraph purports to characterize the General Agreement on Tariffs and  
14 Trade (GATT), which speaks for itself. Defendants deny the allegations to the extent they are  
15 inconsistent with the GATT and/or cases interpreting it.

16           215. Defendants are without information regarding this paragraph and therefore deny  
17 the same.

18           216. Paragraph 216 asserts legal conclusions and contains Plaintiffs'  
19 characterizations regarding the ICC Termination Act (ICCTA). The ICCTA speaks for itself.  
20 To the extent a response is required, Defendants deny any allegations contrary to the plain  
21 language, meaning, and case law interpretations of the ICCTA.

22           217. Paragraph 217 asserts a legal conclusion and contains Plaintiffs'  
23 characterizations regarding the ICCTA. The ICCTA speaks for itself. To the extent a response  
24 is required, Defendants deny any allegations contrary to the plain language, meaning, and case  
25 law interpretations of the ICCTA.  
26





1 225. Deny.

2 226. Deny. On information and belief, Defendants allege that other SEPA reviews  
3 have included analysis of impacts beyond the boundaries of Washington State.

4 227. Deny.

5 228. Deny.

6 229. Deny.

7 230. Deny.

8 231. Deny.

9 232. Deny.

10 233. Deny.

11 234. Deny.

12 235. Deny.

13 236. Deny.

14 237. Deny.

15 238. Deny.

16 239. Deny.

17 **Count II – Dormant Interstate Commerce Clause**

18 240. Defendants incorporate the answers to paragraphs 1 through 239 as though fully  
19 set forth herein.

20 241. Deny.

21 242. Deny.

22 243. Deny.

23 244. Deny.

24 245. Deny.

25 246. Deny.

26 247. Deny.

1 248. Deny.

2 **Count III – ICCTA Preemption**

3 249. Defendants incorporate the answers to paragraphs 1 through 248 as though fully  
4 set forth herein.

5 250. Defendants are without information regarding paragraph 250 and therefore deny  
6 the same.

7 251. Deny.

8 252. Deny.

9 253. Deny.

10 254. Deny.

11 255. Deny.

12 256. Deny.

13 **Count IV – PSWA Preemption**

14 257. Defendants incorporate the answers to paragraphs 1 to 256 as though fully set  
15 forth herein.

16 258. Paragraph 258 asserts legal conclusions to which no response is required. To the  
17 extent a response is required, Defendants deny the allegations in this paragraph.

18 259. The allegations of paragraph 259 purport to characterize the PWSA which  
19 speaks for itself and is the best evidence of its contents. To the extent a response is required,  
20 Defendants deny the allegations of paragraph 259.

21 260. Deny.

22 261. Deny.

23 262. Deny.

24 263. Deny.

25 264. Deny.

26

**VII. PRAYER FOR RELIEF**

The remaining paragraphs of Plaintiffs’ Complaint, denominated A–L, constitute Plaintiffs’ request for relief to which no response is required. To the extent a further response may be required, Defendants’ deny that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

**VIII. AFFIRMATIVE DEFENSES**

A. Plaintiffs’ Complaint fails to state a claim for relief.

B. Defendant Franz is immune from suit in federal court under the 11th Amendment to the U.S. Constitution for actions taken in her proprietary capacity.

C. To the extent Plaintiffs seek monetary damages, Defendants are entitled to qualified immunity.

D. Plaintiffs have an adequate remedy in state court for their alleged injuries that they are actively pursuing. This Court should abstain from ruling on Plaintiffs’ constitutional claims until the state court proceedings are completed.

E. Plaintiffs have failed to obtain other necessary permits for their proposed coal export project. As a result, the proprietary and regulatory decisions by Defendants Bellon and Franz alleged in the Complaint are not the cause of Plaintiffs’ alleged injuries.

F. Defendants Bellon and Franz had legitimate, non-discriminatory reasons for making the proprietary and regulatory decisions alleged in the Complaint.

G. The proprietary and regulatory decisions by Defendants Bellon and Franz alleged in the Complaint do not have the purpose or effect of discriminating against interstate or foreign commerce, nor do they place any undue burden on interstate or foreign commerce. On information and belief, Defendants allege that substantial amounts of coal move freely through and around the state by rail, across the country, and are exported to foreign countries, notwithstanding the proprietary and regulatory decisions alleged in the Complaint.

1 H. Defendants have not interfered in foreign affairs by denying authorizations and  
2 approvals for Millennium’s coal export project.

3 I. Neither Plaintiff is a rail carrier and therefore preemption under the ICCTA  
4 does not apply in this case. The Surface Transportation Board does not have jurisdiction over  
5 the construction of Millennium’s proposed coal export terminal. The PWSA also does not  
6 apply in this case.

7 J. To the extent Plaintiffs seek to challenge the EIS for Millennium’s coal export  
8 project, their challenge is time barred and they have failed to exhaust administrative remedies.

9 K. Despite opportunities to do so, Plaintiffs failed or refused to provide mitigation  
10 to offset the environmental impacts found by the EIS, failed or refused to provide information  
11 requested by DNR, and failed or refused to demonstrate reasonable assurance of compliance  
12 with state water quality standards. As a result, Plaintiffs alleged injuries are the result of their  
13 own actions and inaction.

14 L. Plaintiffs have failed to join necessary and indispensable parties.

15 M. Preemption claims are not cognizable under 42 U.S.C. § 1983.

16 N. Plaintiffs lack standing to bring their claims in this Court.

17 O. Plaintiffs’ claims are not ripe.

18 P. Defendants reserve the right to supplement these affirmative defenses.

19 **IX. DEFENDANTS’ REQUEST FOR RELIEF**

20 Wherefore, Defendants pray that the Court:

- 21 1. Dismiss Plaintiffs’ Complaint with prejudice.
- 22 2. Deny all relief requested by Plaintiffs.
- 23 3. Grant Defendants their costs and reasonable attorneys’ fees herein.

24 //

25 //

26 //

1 4. Grant Defendants such other and further relief as the Court may deem just and  
2 proper.

3 DATED this 13th day of June 2018.

4 ROBERT W. FERGUSON  
5 Attorney General

6 s/ Laura J. Watson

7 s/ Lee Overton

8 s/ Thomas J. Young

9 s/ Sonia A. Wolfman

10 LAURA J. WATSON, WSBA #28452

11 Senior Assistant Attorney General

12 H. LEE OVERTON, WSBA #38055

13 Assistant Attorney General

14 THOMAS J. YOUNG, WSBA #17366

15 Senior Counsel

16 SONIA A. WOLFMAN, WSBA #30510

17 Assistant Attorney General

18 Office of the Attorney General

19 Ecology Division

20 P.O. Box 40117

21 Olympia, WA 98504-0117

22 Telephone: 360-586-6770

23 Email: ECYOLYEF@atg.wa.gov

24 LauraW2@atg.wa.gov

25 LeeO1@atg.wa.gov

26 TomY@atg.wa.gov

SoniaW@atg.wa.gov

*Attorneys for the Defendants*

*Jay Inslee, in his official capacity as Governor*

*of the State of Washington; and Maia Bellon,*

*in her official capacity as Director of the*

*Washington Department of Ecology*

s/ Edward D. Callow

EDWARD D. CALLOW, WSBA #30484

Assistant Attorney General

Office of the Attorney General

Natural Resources Division

P.O. Box 40100

Olympia, WA 98504-0100

Telephone: 360-664-2854

Email: RESOlyEF@atg.wa.gov

tedc@atg.wa.gov

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*Attorney for Defendant  
Hilary S. Franz, in her official capacity as  
Commissioner of Public Lands*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2018, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

DATED this 13th day of June 2018.

s/ Laura J. Watson  
LAURA J. WATSON, WSBA #28452  
Senior Assistant Attorney General  
360-586-6743

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