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The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
FOR THE 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

DEFENDANT-INTERVENORS'
ANSWER TO PLAINTIFFS'
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

GENERAL DENIAL

Defendant-intervenors Washington Environmental Council, Columbia Riverkeeper, Friends of the Columbia Gorge, Climate Solutions, and Sierra Club submit the following Answer to the Complaint for Declaratory and Injunctive Relief filed by Plaintiffs Lighthouse Resources Inc., Lighthouse Products, LLC, LHR Infrastructure, LLC, LHR Coal, LLC, and Millennium Bulk Terminals-Longview. Except as expressly admitted herein, Defendant-intervenors deny each and every allegation contained in Plaintiffs' Complaint and deny that Plaintiffs are entitled to any of the

DEFENDANT-INTERVENORS' ANSWER
TO PLAINTIFFS' COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

Case No. 3:18-cv-05005-RJB

Earthjustice
705 Second Ave., Suite 203
Seattle, WA 98104
(206) 343-7340

1 relief requested. Defendant-intervenors respond to each numbered paragraph of Plaintiffs'

2 Complaint as follows:

3 I. INTRODUCTION

4 1. This paragraph states a legal conclusion to which no response is required. To the
5 extent a response is required, Defendant-intervenors 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 the
8 extent a response is required, Defendant-intervenors 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' characterizations of their lawsuit,
11 to which no response is required. To the extent a response is required, Defendant-intervenors deny
12 the allegations.

13 4. Defendant-intervenors admit that Department of Ecology Director Bellon denied a
14 Clean Water Act section 401 certification for Millennium's proposed coal export terminal in
15 Cowlitz County, Washington. Defendant-intervenors further admit that former Commissioner of
16 Public Lands Peter Goldmark denied a request to sublease state-owned aquatic lands to Millennium
17 for a proposed coal export terminal, and that current Commissioner of Public Lands Hilary Franz
18 denied without prejudice Millennium's request for authorizations to construct docks and other
19 facilities on state-owned aquatic lands under an existing lease. Defendant-intervenors deny the
20 remainder of this paragraph.

21 5. Defendant-intervenors lack information sufficient to form a belief as to the truth or
22 falsity of the allegations in paragraph 5 and, therefore, deny the allegations.

23 6. Defendant-intervenors admit that there are coal reserves located in the United States.
24 Defendant-intervenors lack information sufficient to form a belief as to the truth or falsity of the
25 allegations in the remainder of paragraph 6 and, therefore, deny the allegations.

1 extent a response is required, Defendant-intervenors deny that this Court has jurisdiction over
2 Plaintiffs' claims.

3 14. This paragraph asserts legal conclusions to which no response is required. To the
4 extent a response is required, Defendant-intervenors deny that Plaintiffs are entitled to the relief
5 sought.

6 15. This paragraph asserts legal conclusions to which no response is required. To the
7 extent a response is required, Defendant-intervenors deny that venue is proper in this Court.

8 III. PARTIES

9 16. Defendant-intervenors lack information sufficient to form a belief as to the truth or
10 falsity of the allegations in paragraph 16 and, therefore, deny the same.

11 17. Defendant-intervenors lack information sufficient to form a belief as to the truth or
12 falsity of the allegations in paragraph 17 and, therefore, deny the same.

13 18. Defendant-intervenors lack information sufficient to form a belief as to the truth or
14 falsity of the allegations in paragraph 18 and, therefore, deny the same.

15 19. Defendant-intervenors admit that Millennium has proposed to develop a coal export
16 terminal in Cowlitz County, Washington, and that Millennium proposed to export coal to Asia.
17 Defendant-intervenors lack information sufficient to form a belief as to the truth or falsity of the
18 allegations in the remainder of paragraph 19 and, therefore, deny the allegations.

19 20. Defendant-intervenors lack information sufficient to form a belief as to the truth or
20 falsity of the allegations in paragraph 20 and, therefore, deny the same.

21 21. Admit.

22 22. Admit.

23 23. Admit.

24 IV. FACTUAL ALLEGATIONS

25 24. Defendant-intervenors lack information sufficient to form a belief as to the truth or
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1 falsity of the allegations in paragraph 24 and, therefore, deny the same.

2 25. Defendant-intervenors lack information or knowledge sufficient to form a belief as
3 to the truth of the allegations in paragraph 25 and, therefore, deny the same.

4 26. Defendant-intervenors lack information or knowledge sufficient to form a belief as
5 to the truth of the allegations in paragraph 26 and, therefore, deny the same.

6 27. Defendant-intervenors lack information or knowledge sufficient to form a belief as
7 to the truth of the allegations in paragraph 27 and, therefore, deny the same.

8 28. Defendant-intervenors lack information or knowledge sufficient to form a belief as
9 to the truth of the allegations in paragraph 28 and, therefore, deny the same.

10 29. Defendant-intervenors lack information or knowledge sufficient to form a belief as
11 to the truth of the allegations in paragraph 29 and, therefore, deny the same.

12 30. Defendant-intervenors lack information or knowledge sufficient to form a belief as
13 to the truth of the allegations in paragraph 30 and, therefore, deny the same.

14 31. Defendant-intervenors lack information or knowledge sufficient to form a belief as
15 to the truth of the allegations in paragraph 31 and, therefore, deny the same.

16 32. Defendant-intervenors lack information or knowledge sufficient to form a belief as
17 to the truth of the allegations in paragraph 32 and, therefore, deny the same.

18 33. Defendant-intervenors lack information or knowledge sufficient to form a belief as
19 to the truth of the allegations in paragraph 33 and, therefore, deny the same.

20 34. Defendant-intervenors lack information or knowledge sufficient to form a belief as
21 to the truth of the allegations in paragraph 34 and, therefore, deny the same.

22 35. Defendant-intervenors lack information or knowledge sufficient to form a belief as
23 to the truth of the allegations in paragraph 35 and, therefore, deny the same.

24 36. Defendant-intervenors lack information or knowledge sufficient to form a belief as
25 to the truth of the allegations in paragraph 36 and, therefore, deny the same.

1 37. Defendant-intervenors lack information or knowledge sufficient to form a belief as
2 to the truth of the allegations in paragraph 37 and, therefore, deny the same.

3 38. Defendant-intervenors lack information or knowledge sufficient to form a belief as
4 to the truth of the allegations in paragraph 38 and, therefore, deny the same.

5 39. Defendant-intervenors lack information or knowledge sufficient to form a belief as
6 to the truth of the allegations in paragraph 39 and, therefore, deny the same.

7 40. Defendant-intervenors lack information or knowledge sufficient to form a belief as
8 to the truth of the allegations in paragraph 40 and, therefore, deny the same.

9 41. Defendant-intervenors lack information or knowledge sufficient to form a belief as
10 to the truth of the allegations in paragraph 41 and, therefore, deny the same.

11 42. Defendant-intervenors lack information or knowledge sufficient to form a belief as
12 to the truth of the allegations in paragraph 42 and, therefore, deny the same.

13 43. Defendant-intervenors lack information or knowledge sufficient to form a belief as
14 to the truth of the allegations in paragraph 43 and, therefore, deny the same.

15 44. Defendant-intervenors lack information or knowledge sufficient to form a belief as
16 to the truth of the allegations in paragraph 44 and, therefore, deny the same.

17 45. Defendant-intervenors lack information or knowledge sufficient to form a belief as
18 to the truth of the allegations in paragraph 45 and, therefore, deny the same.

19 46. Defendant-intervenors lack information or knowledge sufficient to form a belief as
20 to the truth of the allegations in paragraph 46 and, therefore, deny the same.

21 47. Defendant-intervenors lack information or knowledge sufficient to form a belief as
22 to the truth of the allegations in paragraph 47 and, therefore, deny the same.

23 48. Defendant-intervenors lack information or knowledge sufficient to form a belief as
24 to the truth of the allegations in paragraph 48 and, therefore, deny the same.

25 49. Defendant-intervenors lack information or knowledge sufficient to form a belief as
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1 to the truth of the allegations in paragraph 49 and, therefore, deny the same.

2 50. Defendant-intervenors lack information or knowledge sufficient to form a belief as
3 to the truth of the allegations in paragraph 50 and, therefore, deny the same.

4 51. Defendant-intervenors lack information or knowledge sufficient to form a belief as
5 to the truth of the allegations in paragraph 51 and, therefore, deny the same.

6 52. Defendant-intervenors lack information or knowledge sufficient to form a belief as
7 to the truth of the allegations in paragraph 52 and, therefore, deny the same.

8 53. Defendant-intervenors lack information or knowledge sufficient to form a belief as
9 to the truth of the allegations in paragraph 53 and, therefore, deny the same.

10 54. Defendant-intervenors lack information or knowledge sufficient to form a belief as
11 to the truth of the allegations in the first sentence of paragraph 54 and, therefore, deny the same.

12 Admit the second sentence.

13 55. Defendant-intervenors lack information or knowledge sufficient to form a belief as
14 to the truth of the allegations in paragraph 55 and, therefore, deny the same.

15 56. Defendant-intervenors lack information or knowledge sufficient to form a belief as
16 to the truth of the allegations in paragraph 56 and, therefore, deny the same.

17 57. Defendant-intervenors lack information or knowledge sufficient to form a belief as
18 to the truth of the allegations in paragraph 57 and, therefore, deny the same.

19 58. Defendant-intervenors lack information or knowledge sufficient to form a belief as
20 to the truth of the allegations in paragraph 58 and, therefore, deny the same.

21 59. Defendant-intervenors admit that the state of Oregon denied a permit for a coal
22 export terminal at the Port of Morrow. Defendant-intervenors lack information or knowledge
23 sufficient to form a belief as to the truth of the allegations in the remainder of paragraph 59 and,
24 therefore, deny the same.

25 60. Defendant-intervenors lack information or knowledge sufficient to form a belief as
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1 to the truth of the allegations in paragraph 60 and, therefore, deny the same.

2 61. Defendant-intervenors lack information or knowledge sufficient to form a belief as
3 to the truth of the allegations in paragraph 61 and, therefore, deny the same.

4 62. Defendant-intervenors lack information or knowledge sufficient to form a belief as
5 to the truth of the allegations in paragraph 62 and, therefore, deny the same.

6 63. Admit that Northwest Alloys, Inc., holds a 30-year aquatic lands lease term with the
7 Washington Department of Natural Resources. The terms of the lease speak for themselves.

8 Defendant-intervenors deny Plaintiffs' interpretation of the terms of the lease.

9 64. Defendant-intervenors deny this paragraph to the extent it is inconsistent with the
10 terms of the lease. The terms of the lease speak for themselves.

11 65. For the first sentence of paragraph 65, Defendant-intervenors admit that Millennium
12 purchased the facility assets from Chinook Ventures in January 2011, and now operates on a ground
13 lease with Northwest Alloys, Inc. In regard to the second sentence in paragraph 65, Defendant-
14 intervenors admit that Millennium has engaged in environmental remediation at the site subject to
15 oversight by Ecology. Defendant-intervenors lack information or knowledge sufficient to form a
16 belief as to the truth of the allegations in the remainder of the second sentence in paragraph 65 and,
17 therefore, deny the same.

18 66. Defendant-intervenors lack information or knowledge sufficient to form a belief as
19 to the truth of the allegations in paragraph 66 and, therefore, deny the same.

20 67. Admit.

21 68. Admit that the Millennium site is located on the banks of the Columbia River.
22 Defendant-intervenors lack information or knowledge sufficient to form a belief as to the truth of
23 the allegations in the remainder of paragraph 68 and, therefore, deny the same.

24 69. Admit that Millennium's proposed coal export terminal was designed for and would
25 have had a maximum annual throughput capacity of up to 44 million metric tons of coal per year at
26

1 full build-out. Defendant-intervenors lack information or knowledge sufficient to form a belief as to
2 the truth of the allegations in the remainder of paragraph 69 and, therefore, deny the same.

3 70. Admit that Millennium reinitiated the permitting process for its proposed project in
4 2012 after having withdrawn its initial permit application. Admit that the permitting process
5 requires approximately two dozen separate federal, state, and local plans, permits, and approvals.

6 71. Defendant-intervenors lack information or knowledge sufficient to form a belief as
7 to the truth of the allegations in paragraph 71 and, therefore, deny the same.

8 72. Defendant-intervenors admit that, according to Millennium, the facility if built
9 would generate jobs. Defendant-intervenors lack information or knowledge sufficient to form a
10 belief as to the truth of the allegations in the remainder of paragraph 72 and, therefore, deny the
11 same.

12 73. Defendant-intervenors admit that, according to Millennium, the facility if built
13 would generate tax revenue. Defendant-intervenors lack information or knowledge sufficient to
14 form a belief as to the truth of the allegations in the remainder of paragraph 73 and, therefore, deny
15 the same.

16 74. Defendant-intervenors lack information or knowledge sufficient to form a belief as
17 to the truth of the allegations in paragraph 74 and, therefore, deny the same.

18 75. Defendant-intervenors lack information or knowledge sufficient to form a belief as
19 to the truth of the allegations in paragraph 75 and, therefore, deny the same.

20 76. Defendant-intervenors lack information or knowledge sufficient to form a belief as
21 to the truth of the allegations in paragraph 76 and, therefore, deny the same.

22 77. Defendant-intervenors lack information or knowledge sufficient to form a belief as
23 to the truth of the allegations in paragraph 77 and, therefore, deny the same.

24 78. Defendant-intervenors lack information or knowledge sufficient to form a belief as
25 to the truth of the allegations in paragraph 78 and, therefore, deny the same.

1 79. Defendant-intervenors lack information or knowledge sufficient to form a belief as
2 to the truth of the allegations in paragraph 79 and, therefore, deny the same.

3 80. Deny.

4 81. Admit that Governor Inslee co-authored a 2007 book title *Apollo's Fire: Igniting*
5 *America's Clean Energy Economy*, which speaks for itself. To the extent a response is required,
6 defendant-intervenors lack information or knowledge sufficient to form a belief as to the truth of the
7 allegations in the remainder of paragraph 81 and, therefore, deny the same.

8 82. Paragraph 82 purports to characterize pages of the book titled *Apollo's Fire:*
9 *Igniting America's Clean Energy Economy*, which speaks for itself. To the extent a response is
10 required, defendant-intervenors lack information or knowledge sufficient to form a belief as to the
11 truth of the allegations in paragraph 82 and, therefore, deny the same.

12 83. Paragraph 83 purports to characterize a November 26, 2012, article from INSIDE
13 CLIMATE NEWS, which speaks for itself. To the extent a response is required, defendant-intervenors
14 admit that the article includes the language quoted in paragraph 83, and deny any remaining
15 allegations in paragraph 83.

16 84. Paragraph 84 quotes from Governor Inslee's inaugural address, which speaks for
17 itself. To the extent a response is required, defendant-intervenors admit that the speech includes the
18 language quoted in paragraph 84, and deny any remaining allegations in paragraph 84.

19 85. Paragraph 85 purports to characterize a January 22, 2013, article from
20 THINKPROGRESS, which speaks for itself. To the extent a response is required, defendant-
21 intervenors admit that the article includes the language quoted in paragraph 85, and deny any
22 remaining allegations in paragraph 85.

23 86. Paragraph 86 purports to characterize a YouTube video, dated May 20, 2014. The
24 video speaks for itself. To the extent a response is required, defendant-intervenors admit that the
25 video includes the language quoted in paragraph 86, and deny any remaining allegations in
26

1 paragraph 86.

2 87. Paragraph 87 purports to characterize a video of a March 25, 2017 press conference
3 on TVW. The video speaks for itself. To the extent a response is required, defendant-intervenors
4 admit that the video includes the language quoted in paragraph 87, and deny any remaining
5 allegations in paragraph 87.

6 88. Paragraph 88 purports to characterize a YouTube video of an October 2017 Town
7 Hall meeting. The video speaks for itself. To the extent a response is required, defendant-
8 intervenors admit that the video includes the language quoted in paragraph 88, and deny any
9 remaining allegations in paragraph 88.

10 89. Paragraph 89 purports to characterize a video of an October 25, 2017 press
11 conference on TVW. The video speaks for itself. To the extent a response is required, defendant-
12 intervenors admit that the video includes the language quoted in paragraph 89, and deny any
13 remaining allegations in paragraph 89.

14 90. Deny.

15 91. Admit the first sentence of paragraph 91. Deny the second sentence of paragraph 91.

16 92. Paragraph 92 purports to characterize a video of a November 14, 2013, panel
17 discussion on TVW. The video speaks for itself. To the extent a response is required, defendant-
18 intervenors admit that the video includes the language quoted in paragraph 92, and deny any
19 remaining allegations in paragraph 92.

20 93. Admit that the Department of Ecology (“Ecology”) published its environmental
21 impact statement (“EIS”) for the Millennium Bulk Terminal in April 2017. Defendant-intervenors
22 lack information or knowledge sufficient to form a belief as to the truth of the allegations in the
23 remainder of paragraph 93 and, therefore, deny the same.

24 94. Defendant-intervenors lack information or knowledge sufficient to form a belief as
25 to the truth of the allegations in paragraph 94 and, therefore, deny the same.

1 95. Defendant-intervenors lack information or knowledge sufficient to form a belief as
2 to the truth of the allegations in paragraph 95 and, therefore, deny the same.

3 96. Paragraph 96 purports to characterize a September 7, 2016, article from THE LENS,
4 and a 46th District Democrats Legislative & Statewide Questionnaire. The article and questionnaire
5 speak for themselves. To the extent a response is required, defendant-intervenors admit that the
6 questionnaire includes the language quoted in paragraph 96, and deny any remaining allegations in
7 paragraph 96.

8 97. Paragraph 96 purports to characterize information on Commissioner of Public Lands
9 Hilary Franz's website. The website speaks for itself. To the extent a response is required,
10 defendant-intervenors admit that the website contains the language quoted in paragraph 97, and
11 deny any remaining allegations in paragraph 97.

12 98. Deny.

13 99. Deny.

14 100. Defendant-intervenors lack information or knowledge sufficient to form a belief as
15 to the truth of the allegations in paragraph 100 and, therefore, deny the same.

16 101. Admit.

17 102. Defendant-intervenors lack information or knowledge sufficient to form a belief as
18 to the truth of the allegations in paragraph 102 and, therefore, deny the same.

19 103. Defendant-intervenors lack information or knowledge sufficient to form a belief as
20 to the truth of the allegations in paragraph 103 and, therefore, deny the same.

21 104. Defendant-intervenors lack information or knowledge sufficient to form a belief as
22 to the truth of the allegations in paragraph 104 and, therefore, deny the same.

23 105. Defendant-intervenors lack information or knowledge sufficient to form a belief as
24 to the truth of the allegations in paragraph 105 and, therefore, deny the same.

25 106. Defendant-intervenors lack information or knowledge sufficient to form a belief as
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1 to the truth of the allegations in paragraph 106 and, therefore, deny the same.

2 107. Defendant-intervenors lack information or knowledge sufficient to form a belief as
3 to the truth of the allegations in paragraph 107 and, therefore, deny the same.

4 108. Paragraph 108 purports to characterize a March 25, 2013, letter co-authored by
5 Governor Inslee to the chair of the White House Council on Environmental Quality. The letter
6 speaks for itself. To the extent a response is required, defendant-intervenors admit that the letter
7 includes the language quoted in paragraph 108, and deny any remaining allegations in paragraph
8 108.

9 109. Defendant-intervenors lack information or knowledge sufficient to form a belief as
10 to the truth of the allegations in paragraph 109 and, therefore, deny the same.

11 110. Admit.

12 111. Defendant-intervenors lack information or knowledge sufficient to form a belief as
13 to the truth of the allegations in paragraph 111 and, therefore, deny the same.

14 112. Defendant-intervenors lack information or knowledge sufficient to form a belief as
15 to the truth of the allegations in paragraph 112 and, therefore, deny the same.

16 113. Defendant-intervenors lack information or knowledge sufficient to form a belief as
17 to the truth of the allegations in paragraph 113 and, therefore, deny the same.

18 114. Defendant-intervenors lack information or knowledge sufficient to form a belief as
19 to the truth of the allegations in paragraph 114 and, therefore, deny the same.

20 115. Defendant-intervenors lack information or knowledge sufficient to form a belief as
21 to the truth of the allegations in paragraph 115 and, therefore, deny the same.

22 116. Admit.

23 117. Admit.

24 118. Admit the first sentence of paragraph 118. Defendant-intervenors lack information
25 or knowledge sufficient to form a belief as to the truth of the allegations in the remainder of

1 paragraph 118 and, therefore, deny the same.

2 119. Admit that, after a document was discovered during the course of litigation showing
3 that Millennium deliberately misled state and local regulators about the intended size of its proposed
4 project, Millennium withdrew its permit application and began a new process that included the
5 preparation on an EIS. Deny any remaining allegations in paragraph 119.

6 120. Defendant-intervenors lack information or knowledge sufficient to form a belief as
7 to the truth of the allegations in paragraph 120 and, therefore, deny the same.

8 121. Defendant-intervenors lack information or knowledge sufficient to form a belief as
9 to the truth of the allegations in the first sentence of paragraph 121 and, therefore, deny the same.
10 The second sentence of paragraph 121 purports to characterize a letter, which speaks for itself and is
11 the best evidence of its contents. Defendant-intervenors admit that the letter includes language
12 quoted in paragraph 121 and deny any remaining allegations.

13 122. Deny.

14 123. Defendant-intervenors lack information or knowledge sufficient to form a belief as
15 to the truth of the allegations in paragraph 123 and, therefore, deny the same.

16 124. Admit that the co-lead agencies, Ecology and Cowlitz County, jointly decided that
17 the EIS for Millennium's proposed project would evaluate impacts beyond the State's borders,
18 including impacts from lifecycle greenhouse gas emissions and transportation that occurs outside
19 the project area and the State of Washington. Defendant-intervenors lack information or knowledge
20 sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 124 and,
21 therefore, deny the same.

22 125. Defendant-intervenors lack information or knowledge sufficient to form a belief as
23 to the truth of the allegations in paragraph 123 and, therefore, deny the same.

24 126. Paragraph 126 purports to characterize a February 2014 Memorandum of Decision
25 by the Corps, which speaks for itself. Defendant-intervenors deny any allegations to the extent they

1 are not consistent with the Memorandum.

2 127. Deny.

3 128. Paragraph 128 purports to characterize a video of a June 2, 2016, interview on
4 TVW. The video speaks for itself. To the extent a response is required, Defendant-intervenors deny
5 any allegations inconsistent with the text of the interview.

6 129. Paragraph 129 purports to characterize the same TVW interview referenced in
7 paragraph 128, which speaks for itself. To the extent a response is required, Defendant-intervenors
8 deny any allegations inconsistent with the text of the interview.

9 130. Deny.

10 131. Deny.

11 132. Paragraph 132 purports to characterize the draft and final EIS for Millennium's
12 proposed project, as well as several comment letters. The documents speak for themselves.
13 Defendant-intervenors deny any allegations inconsistent with the text of the documents.

14 133. Paragraph 133 purports to characterize a technical report from the final EIS for
15 Millennium's proposed project. The report speaks for itself. Defendant-intervenors deny any
16 allegations inconsistent with the report and the text of the EIS.

17 134. Admit that Ecology Director Bellon denied a Clean Water Act section 401
18 certification for Millennium's proposed coal export terminal due to the project's numerous
19 significant, adverse, unavoidable environmental and health impacts, as well as Millennium's failure
20 to demonstrate reasonable assurance of compliance with state water quality standards. Defendant-
21 intervenors deny any remaining allegations in paragraph 134.

22 135. Paragraph 135 purports to characterize Ecology's section 401 denial, Order No.
23 15417, which speaks for itself. Defendant-intervenors deny any allegations inconsistent with the
24 text of the Order.

25 136. The first sentence of paragraph 136 purports to characterize a May 25, 2017
26

1 interview given by Director Bellon on the television show Inside Olympia. The interview speaks
2 for itself. Defendant-intervenors deny any allegations inconsistent with the content of the interview.
3 Defendant-intervenors deny the remainder of paragraph 136.

4 137. Defendant-intervenors lack information or knowledge sufficient to form a belief as
5 to the truth of the allegations in paragraph 137 and, therefore, deny the same.

6 138. Defendant-intervenors lack information or knowledge sufficient to form a belief as
7 to the truth of the allegations in paragraph 138 and, therefore, deny the same.

8 139. Defendant-intervenors lack information or knowledge sufficient to form a belief as
9 to the truth of the allegations in paragraph 139 and, therefore, deny the same.

10 140. Defendant-intervenors lack information or knowledge sufficient to form a belief as
11 to the truth of the allegations in paragraph 140 and, therefore, deny the same.

12 141. Defendant-intervenors lack information or knowledge sufficient to form a belief as
13 to the truth of the allegations in paragraph 141 and, therefore, deny the same.

14 142. Defendant-intervenors lack information or knowledge sufficient to form a belief as
15 to the truth of the allegations in paragraph 142 and, therefore, deny the same.

16 143. Defendant-intervenors lack information or knowledge sufficient to form a belief as
17 to the truth of the allegations in paragraph 143 and, therefore, deny the same.

18 144. Defendant-intervenors lack information or knowledge sufficient to form a belief as
19 to the truth of the allegations in paragraph 144 and, therefore, deny the same.

20 145. Defendant-intervenors lack information or knowledge sufficient to form a belief as
21 to the truth of the allegations in paragraph 145 and, therefore, deny the same.

22 146. Defendant-intervenors lack information or knowledge sufficient to form a belief as
23 to the truth of the allegations in paragraph 146 and, therefore, deny the same.

24 147. Defendant-intervenors lack information or knowledge sufficient to form a belief as
25 to the truth of the allegations in paragraph 147 and, therefore, deny the same.

1 148. Defendant-intervenors lack information or knowledge sufficient to form a belief as
2 to the truth of the allegations in paragraph 148 and, therefore, deny the same.

3 149. Defendant-intervenors lack information or knowledge sufficient to form a belief as
4 to the truth of the allegations in paragraph 149 and, therefore, deny the same.

5 150. Defendant-intervenors lack information or knowledge sufficient to form a belief as
6 to the truth of the allegations in paragraph 150 and, therefore, deny the same. To the extent that
7 paragraph 150 references an October 18 email, defendant-intervenors deny any allegations
8 inconsistent with said email.

9 151. Defendant-intervenors lack information or knowledge sufficient to form a belief as
10 to the truth of the allegations in paragraph 151 and, therefore, deny the same.

11 152. Admit.

12 153. Admit that Sierra Club, Columbia Riverkeeper, Washington Environmental Council,
13 and Climate Solutions sent a letter to then-Commissioner of Public Lands Peter Goldmark that was
14 dated November 12, 2010. The letter speaks for itself. Defendant-intervenors deny any allegations
15 that are inconsistent with the November 12, 2010 letter.

16 154. Defendant-intervenors lack information or knowledge sufficient to form a belief as
17 to the truth of the allegations in paragraph 154 and, therefore, deny the same.

18 155. Admit that then-Commissioner Goldmark denied consent to sublease by a letter
19 decision dated January 5, 2017.

20 156. Admit that Northwest Alloys, Inc., and Millennium's repeated failures to provide
21 requested financial and business information were among the reasons for the sublease denial as
22 stated in the January 5, 2017 letter. Defendant-intervenors deny all other allegations in paragraph
23 156.

24 157. Defendant-intervenors lack information or knowledge sufficient to form a belief as
25 to the truth of the allegations in paragraph 157 and, therefore, deny the same.

1 158. Admit that Commissioner Franz assumed her position in January 2017. The
2 remainder of paragraph 158 purports to characterize a February 11, 2017 article in THE DAILY
3 NEWS, which speaks for itself. Defendant-intervenors admit that the article includes language
4 quoted in paragraph 158 and deny any remaining allegations.

5 159. Paragraph 159 contains argument to which no response is required. To the extent a
6 response may be required, Defendant-intervenors lack information or knowledge sufficient to form
7 a belief as to the truth of the allegations in paragraph 159 and, therefore, deny the same.

8 160. Paragraph 160 purports to characterize a ruling by the Cowlitz County Superior
9 Court, which speaks for itself. Defendant-intervenors deny any allegations that are inconsistent
10 with the Court's Order.

11 161. Admit.

12 162. Admit that Ecology denied Millennium CWA section 401 certification with
13 prejudice on September 26, 2017. Defendant-intervenors lack information or knowledge sufficient
14 to form a belief as to the truth of the allegations in the remainder of paragraph 162 and, therefore,
15 deny the same.

16 163. Defendant-intervenors lack information or knowledge sufficient to form a belief as
17 to the truth of the allegations in paragraph 163 and, therefore, deny the same.

18 164. Deny.

19 165. Deny.

20 166. Admit that vessel impacts were among the many reasons cited by Ecology in its
21 denial of Millennium's section 401 certification. Deny any remaining allegations in paragraph 166.

22 167. Defendant-intervenors lack information or knowledge sufficient to form a belief as
23 to the truth of the allegations in paragraph 167 and, therefore, deny the same.

24 168. Defendant-intervenors lack information or knowledge sufficient to form a belief as
25 to the truth of the allegations in paragraph 168 and, therefore, deny the same.

1 169. Admit that the cited article includes language quoted in paragraph 169 and deny any
2 remaining allegations.

3 170. As to the first sentence of paragraph 170, Defendant-intervenors admit that the cited
4 reference contains the quoted phrases. Defendant-intervenors deny the second sentence of
5 paragraph 170.

6 171. Paragraph 171 purports to characterize statements made by Governor Inslee at a
7 Town Hall event, which speak for themselves. To the extent a response is required, Defendant-
8 intervenors deny any allegations inconsistent with the Governor's statements.

9 172. Deny.

10 173. Admit.

11 174. Defendant-intervenors admit that Millennium is not exempt from permitting or
12 approval requirements. Defendant-intervenors lack information or knowledge sufficient to form a
13 belief as to the truth of the allegations in the remainder of paragraph 174 and, therefore, deny the
14 same.

15 175. Paragraph 175 contains argument and legal conclusions to which no response is
16 required. To the extent a response may be required, Defendant-intervenors admit that such an
17 export facility would be subject to numerous federal and state environmental review and permitting
18 requirements, but deny all other allegations in paragraph 175.

19 176. Paragraph 176 purports to characterize an October 24, 2017 Memorandum from
20 Commissioner Franz, which speaks for itself. Defendant-intervenors deny any allegations
21 inconsistent with said Memorandum.

22 177. Paragraph 177 purports to characterize an October 24, 2017 Memorandum from
23 Commissioner Franz, which speaks for itself. Defendant-intervenors deny any allegations
24 inconsistent with the said Memorandum.

25 178. Defendant-intervenors lack information or knowledge sufficient to form a belief as
26

1 to the truth of the allegations in paragraph 178 and, therefore, deny the same.

2 179. Admit.

3 180. Admit that Cowlitz County staff prepared a staff report that recommended approval
4 of shorelines permits, with conditions. The staff report speaks for itself.

5 181. Admit that, after a three-day hearing, the Cowlitz County Hearing Examiner issued a
6 decision denying Millennium's application for shoreline permits. The Hearing Examiner's decision
7 speaks for itself. Defendant-intervenors deny any allegations inconsistent with the Hearing
8 Examiner's Decision. Defendant-intervenors further allege that the EIS was issued jointly by
9 Ecology and Cowlitz County.

10 182. Paragraph 182 purports to characterize the Cowlitz County Hearing Examiner's
11 decision, which speaks for itself. Defendant-intervenors deny any allegations inconsistent with the
12 Hearing Examiner's Decision.

13 183. The first sentence of paragraph 183 purports to characterize the Cowlitz County
14 Hearing Examiner's decision, which speaks for itself. Defendant-intervenors deny any allegations
15 inconsistent with the Hearing Examiner's Decision, and deny the remainder of paragraph 183.

16 184. Deny.

17 185. Paragraph 185 purports to characterize a letter from Ecology to Millennium, which
18 speaks for itself. Defendant-intervenors deny any allegations inconsistent with the text of the letter.

19 186. Paragraph 186 purports to characterize a letter from Ecology to Millennium, which
20 speaks for itself. Defendant-intervenors deny any allegations inconsistent with the text of the letter.

21 187. Paragraph 187 purports to characterize a letter from Ecology to Millennium, which
22 speaks for itself. Defendant-intervenors deny any allegations inconsistent with the text of the letter.

23 188. Paragraph 188 purports to characterize a letter from Ecology to Millennium, which
24 speaks for itself. Defendant-intervenors deny any allegations inconsistent with the text of the letter.

25 189. Deny.

1 190. Deny.

2 191. Deny.

3 V. LEGAL AND REGULATORY BACKGROUND

4 192. Defendant-intervenors lack information or knowledge regarding the allegations in
5 paragraph 192 and, therefore, deny the same.

6 193. Defendant-intervenors lack information or knowledge regarding the allegations in
7 paragraph 193 and, therefore, deny the same.

8 194. Defendant-intervenors lack information or knowledge regarding the allegations in
9 paragraph 194 and, therefore, deny the same.

10 195. Defendant-intervenors lack information or knowledge regarding the allegations in
11 paragraph 195 and, therefore, deny the same.

12 196. Defendant-intervenors lack information or knowledge regarding the allegations in
13 paragraph 196 and, therefore, deny the same.

14 197. Defendant-intervenors lack information or knowledge regarding the allegations in
15 paragraph 197 and, therefore, deny the same.

16 198. Defendant-intervenors lack information or knowledge regarding the allegations in
17 paragraph 198 and, therefore, deny the same.

18 199. Defendant-intervenors lack information or knowledge regarding the allegations in
19 paragraph 199 and, therefore, deny the same.

20 200. Defendant-intervenors lack information or knowledge regarding the allegations in
21 paragraph 200 and, therefore, deny the same.

22 201. Defendant-intervenors lack information or knowledge regarding the allegations in
23 paragraph 201 and, therefore, deny the same.

24 202. Defendant-intervenors lack information or knowledge regarding the allegations in
25 paragraph 202 and, therefore, deny the same.

1 203. Defendant-intervenors lack information or knowledge regarding the allegations in
2 paragraph 203 and, therefore, deny the same.

3 204. Defendant-intervenors lack information or knowledge regarding the allegations in
4 paragraph 204 and, therefore, deny the same.

5 205. Defendant-intervenors lack information or knowledge regarding the allegations in
6 paragraph 205 and, therefore, deny the same.

7 206. Admit.

8 207. Admit.

9 208. Paragraph 208 asserts legal conclusions to which no response is required. To the
10 extent a response is required, Defendant-intervenors deny these allegations to the extent they are
11 inconsistent with case law.

12 209. Paragraph 209 asserts legal conclusions to which no response is required. To the
13 extent a response is required, Defendant-intervenors deny these allegations to the extent they are
14 inconsistent with case law.

15 210. Paragraph 210 asserts legal conclusions to which no response is required. To the
16 extent a response is required, Defendant-intervenors deny these allegations to the extent they are
17 inconsistent with case law.

18 211. Paragraph 211 purports to characterize the General Agreement on Tariffs and Trade
19 (“GATT”), which speaks for itself. Defendant-intervenors deny the allegations to the extent they
20 are inconsistent with GATT and/or cases interpreting GATT.

21 212. Paragraph 212 purports to characterize the General Agreement on Tariffs and Trade
22 (“GATT”), which speaks for itself. Defendant-intervenors deny the allegations to the extent they
23 are inconsistent with GATT and/or cases interpreting GATT.

24 213. Paragraph 213 purports to characterize the General Agreement on Tariffs and Trade
25 (“GATT”), which speaks for itself. Defendant-intervenors deny the allegations to the extent they

1 are inconsistent with GATT and/or cases interpreting GATT.

2 214. Paragraph 214 purports to characterize the General Agreement on Tariffs and Trade
3 (“GATT”), which speaks for itself. Defendant-intervenors deny the allegations to the extent they
4 are inconsistent with GATT and/or cases interpreting GATT.

5 215. Paragraph 215 purports to characterize the General Agreement on Tariffs and Trade
6 (“GATT”), which speaks for itself. Defendant-intervenors deny the allegations to the extent they
7 are inconsistent with GATT and/or cases interpreting GATT.

8 216. Paragraph 216 asserts legal conclusions and contains Plaintiffs’ characterizations
9 regarding the ICC Termination Act (“ICCTA”). The ICCTA speaks for itself. To the extent a
10 response is required, Defendant-intervenors deny any allegations contrary to the plain language,
11 meaning, and case law interpretations of the ICCTA.

12 217. Paragraph 217 asserts legal conclusions and contains Plaintiffs’ characterizations
13 regarding the ICCTA. The ICCTA speaks for itself. To the extent a response is required,
14 Defendant-intervenors deny any allegations contrary to the plain language, meaning, and case law
15 interpretations of the ICCTA.

16 218. Paragraph 218 asserts a legal conclusion to which no response is required. To the
17 extent a response is required, Defendant-intervenors deny any allegations contrary to the plain
18 language, meaning, and case law interpretations of the ICCTA, and other authorities.

19 219. Paragraph 219 asserts a legal conclusion to which no response is required. To the
20 extent a response is required, Defendant-intervenors deny any allegations contrary to the plain
21 language, meaning, and case law interpretations of the ICCTA, and other authorities.

22 220. Paragraph 220 asserts a legal conclusion to which no response is required. To the
23 extent a response is required, Defendant-intervenors deny any allegations contrary to the plain
24 language, meaning, and case law interpretations of the Ports and Waterways Safety Act (“PWSA”),
25 and other authorities.

1 221. Paragraph 221 asserts a legal conclusion to which no response is required. To the
2 extent a response is required, Defendant-intervenors deny any allegations contrary to the plain
3 language, meaning, and case law interpretations of the PWSA, and other authorities.

4 222. Paragraph 222 asserts a legal conclusion to which no response is required. To the
5 extent a response is required, Defendant-intervenors deny any allegations contrary to the plain
6 language, meaning, and case law interpretations of the PWSA, and other authorities.

7 223. Paragraph 223 asserts a legal conclusion to which no response is required. To the
8 extent a response is required, Defendant-intervenors deny any allegations contrary to the plain
9 language, meaning, and case law interpretations of the U.S. Constitution, and other authorities.

10 VI. CLAIMS FOR RELIEF

11 COUNT I – DORMANT FOREIGN COMMERCE CLAUSE

12 224. Defendant-intervenors incorporate the answers to paragraphs 1 through 223 as
13 though fully set forth herein.

14 225. Deny.

15 226. Deny. On information and belief, Defendant-intervenors allege that other SEPA
16 reviews have included analysis of impacts beyond the boundaries of Washington State.

17 227. Deny.

18 228. Deny.

19 229. Deny.

20 230. Deny.

21 231. Deny.

22 232. Deny.

23 233. Deny.

24 234. Deny.

25 235. Deny.

1 236. Deny.

2 237. Deny.

3 238. Deny.

4 239. Deny.

5 COUNT II – DORMANT INTERSTATE COMMERCE CLAUSE

6 240. Defendant-intervenors incorporate the answers to paragraphs 1 through 239 as
7 though fully set forth herein.

8 241. Deny.

9 242. Deny.

10 243. Deny.

11 244. Deny.

12 245. Deny.

13 246. Deny.

14 247. Deny.

15 248. Deny.

16 COUNT III – ICCTA PREEMPTION

17 249. Defendant-intervenors incorporate the answers to paragraphs 1 through 248 as
18 though fully set forth herein.

19 250. Paragraph 250 asserts a legal conclusion to which no response is required. To the
20 extent a response is required, Defendant-intervenors deny the allegations in this paragraph.

21 251. Deny.

22 252. Deny.

23 253. Deny.

24 254. Deny.

25 255. Deny.

1 256. Deny.

2 COUNT IV – PWSA PREEMPTION

3 257. Defendant-intervenors incorporate the answers to paragraphs 1 through 256 as
4 though fully set forth herein.

5 258. Paragraph 258 asserts a legal conclusion to which no response is required. To the
6 extent a response is required, Defendant-intervenors deny the allegations in this paragraph.

7 259. Paragraph 259 purports to characterize the PWSA, which speaks for itself and is the
8 best evidence of its contents. To the extent a response is required, Defendant-intervenors deny the
9 allegations of paragraph 259.

10 260. Deny.

11 261. Deny.

12 262. Deny.

13 263. Deny.

14 264. Deny.

15 VII. PRAYER FOR RELIEF

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

20 VIII. AFFIRMATIVE DEFENSES

21 Defendant-intervenors incorporate by reference the affirmative defenses asserted by the
22 State Defendants in their Answer filed with this Court on June 13, 2018, ECF No. 118.

23 IX. DEFENDANT-INTERVENORS’ REQUEST FOR RELIEF

24 Wherefore, Defendant-intervenors’ pray that the Court:

- 25 1. Dismiss Plaintiffs’ Complaint with prejudice.

CERTIFICATE OF SERVICE

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I hereby certify that on June 18, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

Dated this 18th of June, 2018.

s/ Kristen L. Boyles
Kristen L. Boyles, WSBA #23806
EARTHJUSTICE