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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LIGHTHOUSE RESOURCES INC., et al.,

Plaintiffs,

and

BNSF RAILWAY COMPANY

Intervenor-Plaintiff,

v.

JAY INSLEE, et al.,

Defendants,

and

WASHINGTON ENVIRONMENTAL
COUNCIL, et al.,

Intervenor-Defendants.

CASE NO. 3:18-cv-05005-RJB

ORDER ON LIGHTHOUSE
RESOURCES, INC., ET AL'S
MOTION TO MODIFY
SCHEDULING ORDER

THIS MATTER comes before the Court on the Plaintiffs Lighthouse Resources, Inc., *et al.*'s ("Lighthouse") Motion to Modify Scheduling Order (Dkt. 156) and Intervenor-Plaintiff BNSF Railway Company's ("BNSF") Joinder in Lighthouse Plaintiffs' Motion to Modify

1 Scheduling Order (Dkt. 158). The Court has considered the motion, briefs filed in support of and
 2 opposition thereto, and the remainder of the file herein.

3 **I. FACTS AND PENDING MOTION**

4 This case challenges the State's denial of a Clean Water Act Section 401 Certification
 5 ("water quality certificate") and a request for approval of a sublease of state-owned aquatic lands
 6 for Lighthouse's proposed coal export terminal. Dkt. 1. Lighthouse and BNSF, who will
 7 provide rail service to the proposed terminal, maintain that the State's denials are preempted by
 8 the Interstate Commerce Commission Termination Act ("ICCTA") and Lighthouse further
 9 argues that the State's decisions are also preempted by the Ports and Waterways Safety Act
 10 ("PWSA"). Dkts. 1 and 22-1. Lighthouse and BNSF both make claims under the Commerce
 11 Clause of the U.S. Constitution. *Id.*

12 The case is scheduled to begin trial on May 13, 2019 at 9:30 a.m. Dkt. 84. The case
 13 scheduling order set the following deadlines:

14	Disclosure of expert testimony under FRCP 26(a)(2)	November 14, 2018
15	All motions related to discovery must be FILED by	December 24, 2018
16	Discovery completed by	January 14, 2019
17	All dispositive motions filed by	February 12, 2019
18	Motions in limine should be FILED by and NOTED	April 15, 2019
19	on the motion calendar no later than the third Friday	
20	thereafter, but no later than the Friday before any	
	scheduled pretrial conference	
21	Agreed pretrial order LODGED with the Court by	April 26, 2019
22	Pretrial conference will be HELD on	May 3, 2019
23	Trial brief, proposed voir dire due	May 3, 2019.

1 Further, the State and WEC moved for summary judgment dismissal of each of the
2 preemption claims on August 16, 2018. Dkts. 128 and 129. The Plaintiffs and Intervenor-
3 Plaintiff's motions, under Fed. R. Civ. P. 56(d) for the Court to defer ruling on those motions for
4 summary judgment, was granted. Dkt. 153. A supplemental briefing schedule was set and
5 motions for summary judgement (Dkts. 128 and 129) were renoted for consideration on
6 December 3, 2018. *Id.*

7 Lighthouse and BNSF now move for a 60 day extension of all deadlines in the case. Dkts.
8 156 and 158. They assert that the Defendants have been slow to respond to their discovery
9 requests. *Id.* They maintain that: (1) the State still possesses many thousands of electronic
10 documents that they have not produced, (2) "despite signing the ESI Agreement, and being
11 obligated to disclose how their ESI was 'stored and retrieved,' the Defendants are not
12 technologically capable of conducting precise, accurate electronic searches for many of the
13 documents," and (3) no matter what technology the Defendants use, they are not capable of
14 producing documents within a timeframe that will allow the parties to meet the deadlines in the
15 Court's Scheduling Order. *Id.* Lighthouse and BNSF argue that because the State has not
16 produced relevant documents quickly enough, they will not have time to review documents
17 before depositions are held and their experts may not have an opportunity to review relevant
18 documents for their reports. *Id.*

19 Defendants Jay Inslee, Maia Bellon, and Hilary Franz's (collectively the "State") oppose the
20 motion (Dkt. 162) as do Intervenor-Defendants Washington Environmental Council, Climate
21 Solutions, Friends of the Columbia Gorge, Sierra Club and Columbia Riverkeeper's (collectively
22 "WEC") (Dkt. 161). The State points out that it has produced 1,116,782 documents to date and
23 are continuing to do so on a rolling basis. Dkt. 162. It asserts that several of Lighthouse and
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1 BNSF's search terms (for electronically stored documents) are exceedingly broad, and when
2 used often generate tens of thousands of documents per search term. *Id.* The State maintains
3 that it has improved its process and fully anticipates providing all the discovery by the January
4 2019 discovery deadline. *Id.* The State opposes extending the case deadlines. *Id.* If the
5 deadlines are extended, the State indicates that there are schedule conflicts with the July 15, 2019
6 trial date proposed by Lighthouse and BNSF. *Id.*

7 Lighthouse and BNSF reply and argue that while the State has produced large volumes of
8 documents, it has produced only around 11,000 that are relevant. Dkt. 166. It again raises
9 concerns that it will not be able to meet other deadlines due to the State's delay in producing
10 responsive documents. *Id.*

11 **II. DISCUSSION**

12 Under Fed. R. Civ. P. 16(b)(4), a court may modify a case schedule for good cause.

13 Lighthouse and BNSF's motion to extend all case deadlines for 60 days should be denied
14 without prejudice. They have not shown good cause for the extension under Rule 16(b)(4). The
15 current case deadlines remain in effect.

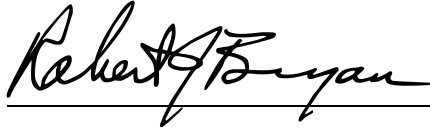
16 **III. ORDER**

17 Therefore, it is hereby **ORDERED** that:

- 18 • Plaintiffs Lighthouse Resources, Inc., *et. al.*'s Motion to Modify Scheduling
19 Order (Dkt. 156) and Intervenor-Plaintiff BNSF Railway Company's Joinder in
20 Lighthouse Plaintiffs' Motion to Modify Scheduling Order (Dkt. 158) **ARE IS**
21 **DENIED WITHOUT PREJUDICE.**

22 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
23 to any party appearing *pro se* at said party's last known address.

1 Dated this 23rd day of October, 2018.

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4 ROBERT J. BRYAN
United States District Judge

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