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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

WASHINGTON ENVIRONMENTAL
COUNCIL *ET AL.* SUPPLEMENT TO
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON PREEMPTION CLAIMS
(Millennium Count III, IV; BNSF Count I)

Defendant-Intervenors Washington Environmental Council *et al.* (“WEC”) have no supplementary material to add in support of their Motion for Partial Summary Judgment on Preemption Claims. The two facts needed to resolve this motion are not in dispute: Plaintiffs Lighthouse Resources *et al.* are not rail carriers, and Plaintiff-Intervenor BNSF is not a part of the proposed Millennium Project. WEC notes that because the Court has dismissed state defendants Hilary Franz and the Department of Natural Resources (Dkt. 170), the sole remaining

1 state action challenged in this case is the Department of Ecology's denial of a Clean Water Act
2 section 401 certification. *See* Order Continuing Motions for Partial Summary Judgment at 2
3 (Dkt. 153). Because ICCTA preemption only applies to actions that fall under the jurisdiction of
4 the Surface Transportation Board, *see* 49 U.S.C. § 10501, and the Surface Transportation Board
5 does not have jurisdiction over Clean Water Act section 401 certifications, *see* 33 U.S.C. § 1341,
6 the ICCTA preemption claims must fail. WEC reserves the right to reply to any supplementary
7 material submitted by Plaintiffs and Plaintiff-Intervenor on November 26, 2018.

8 Respectfully submitted this 19th day of November, 2018.

9
10 *s/ Marisa C. Ordonia*

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 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 19th of November, 2018.

s/ Marisa C. Ordonia

Marisa C. Ordonia, WSBA #48081

EARTHJUSTICE