

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

AUG 29 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LIGHTHOUSE RESOURCES, INC.; et al.,

Plaintiffs-Appellants,

BNSF RAILWAY COMPANY,

Intervenor-Plaintiff-  
Appellant,

v.

JAY ROBERT INSLEE, in his official  
capacity as Governor of the State of  
Washington; et al.,

Defendants-Appellees,

WASHINGTON ENVIRONMENTAL  
COUNCIL; et al.,

Intervenors-Defendants-  
Appellees.

No. 19-35415

D.C. No. 3:18-cv-05005-RJB  
Western District of Washington,  
Tacoma

ORDER

Before: TASHIMA, M. SMITH, and BENNETT, Circuit Judges.

The motion to dismiss this appeal for lack of jurisdiction (Docket Entry No. 7) is denied without prejudice to renewing the arguments in the answering brief. *See Nat'l Indus. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258, 1262 (9th Cir. 1982) (merits panel may consider appellate jurisdiction despite earlier denial of motion to dismiss).

The opening brief and excerpts of record are due September 30, 2019; the answering brief is due October 30, 2019; and the optional reply brief is due within 21 days after service of the answering brief.