UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LIGHTHOUSE RESOURCES, INC.; LIGHTHOUSE PRODUCTS, LLC; LHR INFRASTRUCTURE, LLC; LHR COAL, LLC; and MILLENNIUM BULK TERMINALS-LONGVIEW, LLC,

Plaintiffs,

vs.

JAY INSLEE, in his official capacity as Governor of the State of Washington; MAIA BELLON, in her official capacity as Director of the Washington Department of Ecology; and HILARY S. FRANZ, in her official capacity as Commissioner of Public Lands,

Defendants.

NO. 3:18-cv-05005-RJB

OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL DISMISSAL UNDER ELEVENTH AMENDMENT AND RULE 12(B)(6) AND MOTION FOR ABSTENTION

[ORAL ARGUMENT REQUESTED]

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I. INTRODUCTION

Lighthouse filed this action in federal court to vindicate its rights under federal law. The federal claims before this Court are not being presented in the pending state proceedings that Lighthouse's subsidiary filed to preserve its rights under state law. This case simply seeks a single, federal forum to challenge the Defendants' illegal, unconstitutional efforts to prohibit coal exports through the Millennium Bulk Terminal.

II. BACKGROUND

Lighthouse Resources, Inc. and its subsidiaries (collectively, Lighthouse) operate a coal energy supply chain company.[1] That operation involves far more than the proposed construction of the Millennium Bulk Terminal coal export facility in Longview, Washington. Lighthouse manages or arranges the mining of coal in Montana and Wyoming; secures rail service to move that coal from the mine to the dock; transfers the coal from rail to ocean-going vessels; and sells the coal to end users in Asia.[2]

To supply its Asian customers with the coal it mines in Montana and Wyoming, Lighthouse needs a coal export facility on the West Coast.[3] Because there is currently insufficient West Coast coal export capacity, Lighthouse has been working since 2009 to secure additional capacity.[4] That search led Lighthouse to the Millennium Bulk Terminal, which already receives coal by rail weekly, and where a 2008 Aquatic Lands Lease already expressly allows coal to be handled over and across the docks.[5] In February 2012, Lighthouse applied for permits for a coal export facility there.[6] That process has included, among many other things,

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[1] Dkt. 1, Compl. for Declaratory and Injunctive Relief (Compl.) ¶ 36.
[2] *Id*. ¶¶ 36, 39-48, 67.
[3] *Id*. ¶¶ 50-51.
[4] *Id*. ¶¶ 52-53.
[5] *Id*. ¶¶ 54, 62-63.
[6] *Id*. ¶ 70.

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preparation of an Environmental Impact Statement (EIS) under the Washington State Environmental Policy Act (SEPA).[7]

The Defendants, who oppose coal and coal exports as a policy matter, have no intention of ever approving Lighthouse's proposed coal export facility.[8] To date, they have denied every request for a project-related permit or approval that has come before them.[9] Defendant Bellon has gone further, informing Lighthouse that its "future permit applications" are "likely" to be denied based on the findings in the SEPA EIS, and that the Washington Department of Ecology (Ecology) accordingly "will not be spending time on . . . additional applications for the coal export terminal."[10]

To preserve its rights under state law, Lighthouse subsidiary Millennium Bulk Terminals-Longview (MBT-Longview) has filed the following lawsuits and appeals in state forums: (1) a lawsuit challenging the Washington Department of Natural Resources (DNR)'s refusal to approve a sublease to MBT-Longview, which resulted in a Cowlitz County Superior Court finding that refusal was arbitrary and capricious;[11] (2) an appeal to the state Pollution Control Hearings Board of Ecology's decision to deny a Clean Water Act section 401 certification "with prejudice";[12] (3) a second Cowlitz County Superior Court lawsuit challenging Ecology's refusal to grant a section 401 water quality certification;[13] and (4) an appeal to the state Shoreline Hearings Board challenging shoreline permit denials.[14]

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[7] *See id*. ¶¶ 93, 118-28, 130-36.

[8] *See id*. ¶¶ 80-99, 184-191.

[9] *See id*. ¶¶ 149-183.

[10] *See id*. Exh. D at 2.

[11] *See* Dkt. 62, Defendants' Mot. for Partial Dismissal Under Eleventh Amend. and FRCP 12(b)(6) and Mot. for Abstention (Mot.) Exh. 3; Compl. ¶ 160.

[12] *See* Mot. Exh. 5.

[13] *See id*. Exh. 8-10.

[14] *See id*. Exh. 11-12.

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To preserve its rights under federal law, Lighthouse disclosed and reserved in state proceedings its claims under the ICC Termination Act, the Ports and Waterways Safety Act, and the U.S. Constitution's Commerce Clause "so that they may be heard by the Federal District Court."[15] The entire point of this reservation was to inform these state forums that Lighthouse would ***not*** be pursuing the claims it has now raised in this case. And in fact, despite the Defendants' misleading suggestions to the contrary,[16] the issues raised in this case have not been joined, briefed, or otherwise made a part of the pending state proceedings.

Ultimately, Lighthouse's incremental efforts to correct the Defendants' decisions in multiple state forums can never address the larger problem the company is facing. Because they oppose coal exports as a policy matter, the Defendants have effectively embargoed coal exports from Washington State.[17] That embargo directly conflicts with official federal policy, which specifically favors "'promot[ing] exports of [U.S.] energy resources,' including by 'expand[ing] our export capacity through the continued support of private sector development of coastal terminals . . . ."[18] The only way to redress the Defendants' determination not to allow coal exports—and the harms that determination inflicts on Lighthouse as a supply chain company—is through a single, federal lawsuit that sets federal boundaries on the Defendants' behavior.

III. ARGUMENT

The Defendants introduce their motion by claiming that Lighthouse's Complaint presents a "false narrative."[19] But a Rule 12(b)(6) motion is not the time to challenge the truth

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[15] *Id*. Exh. 5 at 1 n.1; *see also* Exh. 8 at 2 n.1. A similar reservation was made by a different party in connection with the Shorelines Hearing Board Appeal. *See id*. Exh. 12 at 5.

[16] Mot. at 6, 21-24.

[17] *See* Compl. ¶¶ 184-191, 225-239.

[18] *Id*. ¶ 205 (quoting WHITE HOUSE, NATIONAL SECURITY STRATEGY FOR THE UNITED STATES OF AMERICA at 23 (Dec. 2017)).

[19] Mot. at 1.

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of a complaint's narrative. Rather, as the Defendants later concede, courts ruling on 12(b)(6) motions "must accept the allegations in the complaint as true and construe them in the light most favorable to the non-moving party."[20] Under that standard, the Defendants' motion should be denied.

A. Because the relief requested in this case does not divest Washington State of its sovereignty, Commissioner Franz can be sued under *Ex Parte Young*.

Although states as states are normally immune from suit under the Constitution's Eleventh Amendment, the U.S. Supreme Court's decision in *Ex parte Young* recognizes an exception "for certain suits seeking declaratory and injunctive relief against state officers in their individual capacities."[21] Employing that exception, Lighthouse has here sued three state officers in their individual capacities, alleging violations of federal statutes and the Constitution's Commerce Clause. "An allegation of an ongoing violation of federal law where the requested relief is prospective is ordinarily sufficient" to fit within this exception to state sovereign immunity.[22]

Only one of the three Defendants—Lands Commissioner Hilary Franz—claims that she cannot be sued under *Ex parte Young*.[23] She reasons that the declaratory and injunctive relief sought by Lighthouse would "prevent" her "from exercising her authority over state-owned aquatic lands."[24] In this situation, she says, the *Ex parte Young* doctrine does not apply.[25] Commissioner Franz's argument rests on an overly expansive reading of a U.S. Supreme Court

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[20] *Id*. at 7 (citing *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996)).

[21] *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 269 (1997 (citing *Ex parte Young*, 209 U.S. 123 (1908)).

[22] *Id*. at 281; *see also Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645-46 (2002).

[23] Mot. at 7-10.

[24] *Id*. at 10.

[25] *Id*. at 8-9.

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case—*Idaho v. Coeur d'Alene Tribe of Idaho*[26]—that creates a "unique, narrow exception" to *Ex parte Young*.[27]

As an initial matter, the suit in *Coeur d'Alene* was nothing like this one. There, the plaintiff Indian tribe challenged the State of Idaho's ownership of portions of Lake Coeur d'Alene's bedlands—a claim the Court described as "close to the functional equivalent of a quiet title action."[28] If it had prevailed, "substantially all the benefits of ownership" would have "shift[ed] from the State to the Tribe," and the property would have been removed from "the regulatory jurisdiction of the State."[29] Here, by sharp contrast, Lighthouse is not seeking ownership of, or jurisdiction over, the state's aquatic lands. It is simply asking Franz to comply with federal law. This request is in line with the fundamental point of *Ex parte Young*—to provide a federal judicial forum to "vindicate federal rights and hold state officials responsible 'to the supreme authority of the United States.'"[30]

Eliding the factual dissimilarities between this case and *Coeur d'Alene*, Franz argues that the Supreme Court allowed the state to assert immunity because the requested relief "implicated Idaho's sovereignty interests."[31] The Ninth Circuit has expressly rejected that interpretation of *Coeur d'Alene*: "[T]he question posed by *Coeur d'Alene* is ***not*** whether a suit implicates a core area of sovereignty . . . ."[32] The right question is instead whether the plaintiff's

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[26] 521 U.S. 261 (1997).

[27] *Agua Caliente Band of Cahuilla Indians v. Hardin*, 223 F.3d 1041, 1048 (9th Cir. 2000).

[28] *Coeur d'Alene*, 521 U.S. at 282.

[29] *Id.*; *cf. Lacano Invs., LLC v. Balash*, 765 F.3d 1068, 1073-74 (9th Cir. 2014) (finding that the "exact issues" of *Coeur d'Alene* were presented where the plaintiffs alleged they were "'fee simple owners' of streambeds" and the action "was 'close to the functional equivalent'" of a "quiet title action") (quoting *Coeur d'Alene*, 521 U.S. at 282-83); *Hood Canal Sand & Gravel, LLC v. Brady*, No. C14-5662 BHS, 2014 WL 5426718, at *1, 4 (W.D. Wash. Oct. 22, 2014) (finding *Ex parte Young* inapplicable where the plaintiff directly challenged the state's property interests in aquatic lands by seeking "a declaratory judgment that [an existing] easement is invalid").

[30] *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984) (quoting *Ex parte Young*, 208 U.S. at 160).

[31] Mot. at 9.

[32] *Agua Caliente*, 223 F.3d at 1048 (emphasis added); *see also Duke Energy Trading & Mktg., LLC v. Davis*, 267 F.3d 1042, 1054-55 (9th Cir. 2001) ("The fact that [a] lawsuit implicates the State's sovereignty interest . . . does

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requested relief would amount to "a ***divestiture*** of the state's sovereignty."[33] In other words, the "narrow exception . . . carved out by *Coeur d'Alene*" applies when "the specific relief requested by the plaintiff" intrudes on state sovereignty, not when "the relief merely relates to a more general area of core state sovereign interest."[34]

Franz cannot explain how Lighthouse's requested relief would divest Washington State of its sovereignty. The closest she comes is the bald assertion that granting Lighthouse relief would "remove the State's management discretion over its aquatic lands."[35] But Lighthouse isn't challenging the legitimacy of the state's regulatory authority, or its authority to enforce aquatic lands leases, merely its application of that authority in a manner that contravenes federal law.[36] Franz, like any state official, remains bound by federal statutes and the U.S. Constitution.[37] Requiring her to comply with those laws is not comparable to transferring ownership of aquatic lands from the state to a plaintiff. In short, because Lighthouse's requested relief would not divest Washington State's sovereignty, it does not fit within an exception to *Ex parte Young*.

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not suffice to trigger the *Coeur d'Alene* exception" where the relief sought is not analogous "to the sweeping relief requested . . . in *Coeur d'Alene*.").

[33] *Agua Caliente*, 223 F.3d at 1048 (italics in original).

[34] *In re Ellett*, 254 F.3d 1135, 1144 (9th Cir. 2001) (emphasis omitted).

[35] Mot. at 10.

[36] *See In re Ellett*, 254 F.3d at 1144; *see also Jensen v. Locke*, No. 3:08-cv-00286-TMB, 2009 WL 10674336, at *1, *3-5 (D. Alaska Nov. 9, 2009) (rejecting application of *Coeur d'Alene* exception to claims that state fishing regulations violated and were preempted by federal law).

[37] *See Seattle Audubon Soc'y v. Sutherland*, No. CV06-1608MJP, 2007 U.S. Dist. LEXIS 31880, at *43 (W.D. Wash. May 2, 2007) (The Constitution "does not bar a federal court from ordering state officials to comply with federal law."). As in *In re Ellett*, Lighthouse merely seeks to prevent state officials from "engaging in a course of activity in violation of federal law." *In re Ellet*, 254 F.3d at 1138.

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B. The ICC Termination Act prohibits the Defendants from unreasonably burdening rail transportation.

1. The ICC Termination Act broadly preempts state laws that directly or indirectly regulate rail transportation.

Under the ICC Termination Act (ICCTA),[38] the Surface Transportation Board (STB) exercises "exclusive" jurisdiction over "transportation by rail carriers."[39] This broad and plenary jurisdictional grant is accompanied by the sweeping statement that ICCTA's "remedies . . . with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law."[40] The Ninth Circuit accordingly has held that, under ICCTA, "Congress intended to preempt a wide range of state and local regulation of rail activity."[41]

The Defendants recognize that ICCTA preempts state and local regulation that "falls within the statutory jurisdiction of the [STB]."[42] But instead of addressing whether their actions fall within STB's jurisdiction, they subtly shift their focus to a different issue, arguing that because Lighthouse "does not claim to be a rail carrier . . . ICCTA is not implicated."[43] That argument is inconsistent with ICCTA's purposefully broad preemptive scope.

ICCTA preemption is not limited to direct state regulation of "rail carriers." Rather, "ICCTA preempts all 'state laws that may reasonably be said to have the ***effect*** of managing or governing ***rail transportation*** . . . .'"[44] Whether the entity directly regulated qualifies as a rail

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[38] 49 U.S.C. § 10501, *et seq.*

[39] *Id*. § 10501(b); *see City of Seattle v. Burlington N. R.R. Co.*, 145 Wash. 2d 661, 666 (2002) (holding that the STB enjoys "complete jurisdiction, to the exclusion of the states, over the regulation of railroad operations") (citation and internal quotation marks omitted).

[40] 49 U.S.C. § 10501 (b).

[41] *Ass'n of Am. R.R. v. S. Coast Air Quality Mgm't Dist.*, 622 F.3d 1094, 1097 (9th Cir. 2010).

[42] Mot. at 10; *see* Dkt. 63, Wash. Envt'l Council *et al.* Joinder in State Defendants' Mot. for Partial Dismissal and Abstention (Joinder) at 3.

[43] Mot. at 12; *see* Joinder at 2 ("Millennium is not a rail carrier and plainly not covered by the [ICCTA]").

[44] *Ass'n of Am. R.R.*, 622 F.3d at 1097-98 (emphases added) (quoting *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 252 (3d Cir. 2007)).

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carrier is irrelevant. Because both direct and indirect state regulation of "rail transportation" is impermissible, "[w]hat matters is the degree to which the challenged regulation burdens rail transportation."[45] Whenever states "enforce" their laws in ways that "unreasonably burden railroad activity," those laws are preempted.[46]

2. The Defendants explicitly based their decisions on issues within the STB's exclusive jurisdiction.

Here, the Defendants acknowledge that their decisions were based at least in part on "rail impacts."[47] Unlike the cases on which the Defendants rely, however, the impacts that motivated their decisions in this case were not "activities at transloading facilities."[48] For example, the Defendants cited an alleged increase in "toxic air pollutants" from rail locomotives as one reason they denied Lighthouse's request for certification under Clean Water Act section 401.[49] In so doing, they failed to reckon with the Ninth Circuit's conclusion that ICCTA prohibited California from directly regulating locomotive emissions.[50] The Defendants' attempt to indirectly accomplish the same end has the identical, prohibited "effect of managing or governing rail transportation."[51]

Equally blatant, the Defendants' section 401 water quality certification decision includes an entire section entitled "Rail Transportation" as a basis for denying Lighthouse's

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[45] *Id*. at 1098-99; *see also Fla. E. Coast Ry. Co. v. City of W. Palm Beach*, 266 F.3d 1324, 1337 n.9 (11th Cir. 2001). ("Certain local regulations applied against a third-party may be so intertwined with the provision of rail transportation services to the public so as to frustrate the objectives of federal railroad regulation.").

[46] *Ass'n of Am. R.R.*, 622 F.3d at 1098. In addition, both shippers and rail carriers can invoke ICCTA's protections. *See* Boston & Maine Corp. & Springfield Terminal R.R. Co.—Pet. for Decl. Order, STB Dkt. No. FD 35749, 2013 WL 3788140, at *3 (served July 19, 2013) (holding that actions by a local government "conflict[ed] with the federal right of [a shipper] to request common carrier service and the federal obligation of . . . a rail common carrier to provide that service, as well as the Board's exclusive jurisdiction over that service.") Lighthouse is a shipper entitled to common carrier rail service under ICCTA. 49 U.S.C. § 11101(a).

[47] Mot. at 13; Joinder at 8.

[48] Mot. at 12.

[49] Compl. Exh. A at 4-5.

[50] *See Ass'n of Am. R.R.*, 622 F.3d at 1096-98.

[51] *Id*. at 1097

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request.[52] The subsequent discussion posits that the number of trains projected to serve the Millennium Bulk Terminal coal export facility "[a]t full build out" would "exceed[] capacity" on three BNSF main line routes "by 2028."[53] It would plainly infringe on the STB's exclusive authority over "rail transportation" if the Defendants directly limited the number of trains allowed on these rail lines or required rail carriers to increase capacity. Because denying Lighthouse's section 401 certification on that basis creates exactly the same "effect of managing or governing rail transportation"[54] as a decision aimed directly at a rail carrier, it is likewise preempted by ICCTA.[55]

The STB's *Valero Refining Company* decision, on which the Defendants heavily rely, turned on the ***factual*** determination that the local government's actions did not "unreasonably interfere with [the rail carrier's] operations."[56] The STB explicitly recognized that if a local government "were to take actions as part of a proposed safety/hazard study, or otherwise, that interfere unduly with [the railroad's] common carrier obligations, those actions would be preempted under [ICCTA]."[57] That is precisely what is happening here. The Defendants' actions as part of their SEPA EIS, and otherwise, will unduly interfere with rail transportation as a matter of fact. Lighthouse's ICCTA claims therefore cannot be dismissed.[58]

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[52] Compl. Exh. A at 9.

[53] *Id*.

[54] *Ass'n of Am. R.R.*, 622 F.3d at 1097.

[55] The Defendants' section 401 certification decision also cites impacts from "increased train traffic" at certain crossings (Compl. Exh. A at 5-6) and increased "[t]rain-related noise levels" (*id*. at 7) as reasons for their denial of Lighthouse's request. Other decisions at issue in this litigation explicitly relied on the Defendants' section 401 certification decision. *See, e.g.*, Compl. ¶ 177 & Exh. B at 8-10.

[56] Valero Refining Co.—Pet. for Decl. Order, STB Dkt. No. FD 36036, 2016 WL 5904757, at *4 (served Sept. 20, 2016).

[57] *Id*. (internal quotation marks omitted).

[58] To the extent that the Defendants contend their decision does not create an unreasonable burden on rail transportation, they raise a fact question that cannot be resolved at this stage of the litigation, and their motion to dismiss should be denied. *See OSU Student Alliance v. Ray*, 699 F.3d 1053, 1061 (9th Cir. 2012) ("[W]e accept the well-pleaded factual allegations of the complaint as true and construe them in the light most favorable to the plaintiffs.").

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C. The Defendants lack power to regulate national and international maritime commerce.

The federal government has always enjoyed paramount authority over national and international maritime commerce.[59] Its exclusive authority over such maritime trade is established through the U.S. Constitution[60] and a comprehensive scheme of federal statutes and regulations.[61] Recognizing the value of uniform maritime and admiralty law, the Supreme Court has consistently struck down state laws that encroach upon this area of historic federal regulation.[62]

The Ports and Waterways Safety Act (PWSA) is one of several laws that govern vessel operations and provide the U.S. Coast Guard ultimate authority over vessel traffic and safety.[63] In light of these federal authorities, any challenged state actions that "bear upon national and international maritime commerce" do not benefit from a "beginning assumption" that they are "a valid exercise of [the state's] police powers."[64]

Consistent with the federal government's preeminence in regulating national and international maritime commerce, PWSA Title I recognizes that states retain a role in regulating local waters. That role, however, cannot give the states regulatory authority over inherently national issues. As the U.S. Supreme Court has explained, any state regulation of maritime commerce "must be based on 'the peculiarities of local waters that call for special precautionary measures.'"[65] Thus, any state action relating to vessel traffic or safety—which are regulated under PWSA Title I—must be "directed to local circumstances and problems, such as water

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[59] *See U.S. v. Locke*, 529 U.S. 89, 99 (2000) (describing the historical federal interest in a comprehensive and consistent regulatory scheme governing maritime trade and transport).

[60] U.S. CONST. art. I, § 8, cl. 3; *id*. art. III, § 2, cl. 1.

[61] *See* Titles 33 and 46 of the U.S. Code; Titles 33 and 46 of the Code of Federal Regulations.

[62] *See, e.g.*, *Locke*, 529 U.S. 89; *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978).

[63] 33 U.S.C. ch. 25 (Title I); 46 U.S.C. ch. 37 (Title II); *see also* 46 U.S.C. § 3306(a) (requiring the Coast Guard to prescribe regulations governing (among other things) the "operation" of all vessels).

[64] *Locke*, 529 U.S. at 108.

[65] *Id.* at 109 (citing *Ray*, 435 U.S. at 171).

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depth and narrowness, idiosyncratic to a particular port or waterway."[66] And even those local regulatory efforts are preempted by PWSA Title I if the Coast Guard has issued conflicting regulations.[67]

Here, the Defendants have made decisions based explicitly on vessel traffic and safety issues that have nothing to do with "peculiarities" of the Columbia River that warrant "special precautionary measures." For example, their Clean Water Act section 401 water quality certification denial specifically cites an increase in vessel traffic and risk of vessel-related incidents, such as collisions, grounding, and fires.[68] The same rationale appears in the letter informing Lighthouse that its future permit applications would also likely be denied.[69]

By blocking key permits for Lighthouse's proposed coal export terminal based on vessel traffic and safety concerns, the Defendants are effectively limiting the number of vessels utilizing the Columbia River and restricting the cargo—coal—that those vessels are allowed to carry.[70] These are not among the local problems like "water depth and narrowness" that states are authorized to regulate.[71] To the extent the Defendants claim otherwise or suggest that they are attempting to address local issues, their arguments are unavoidably factual and thus not appropriately addressed under Rule 12(b)(6).[72] Lighthouse's PWSA claims therefore cannot be dismissed.

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[66] *Id.* This distinguishes the present case from *Beveridge v. Lewis*, 939 F.2d 859, 861 (9th Cir. 1991) (ordinance that prohibited anchoring in certain areas during the winter), and *Chevron U.S.A, Inc. v. Hammond*, 726 F.2d 483, 486 (9th Cir. 1984) (state law intended to protect the Alaskan marine environment from harm caused by ballast discharges), both of which concerned regulations based on specific local characteristics and considerations.

[67] *See Locke*, 529 U.S. at 109-10.

[68] Compl. Exh. A at 10-11.

[69] *Id.* Exh. D at 2 (relying on the findings in the SEPA EIS including impacts from increased vessel traffic).

[70] *Id.* Exh. A at 10-11 (denying certification in part because "the Project would be responsible for over one quarter of the traffic in the Columbia River").

[71] *Locke*, 529 U.S. at 109.

[72] *See OSU Student Alliance*, 699 F.3d at 1061.

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D. Because abstention would deprive Lighthouse of a federal forum for its federal claims, it is not appropriate in this case.

Federal courts have a "virtually unflagging obligation" to exercise their jurisdiction, even in the face of "[p]arallel state-court proceedings."[73] The Defendants, without mentioning this bedrock principle, ask the Court not to exercise its jurisdiction in this case.[74] To that end, the Defendants twist Lighthouse's candor in "appris[ing] the state court of the existence" of its federal claims[75] into an attempt to take two bites at the same apple. In fact, this sort of "*England* reservation" is perfectly appropriate when, as here, a litigant is not pursuing its federal claims in state court.[76] With that underbrush cleared away, the Defendants' case for abstention effectively disappears. Abstention is appropriate only "in a few exceptional circumstances,"[77] none of which are present in this case.

1. Abstention is especially inappropriate in a section 1983 case brought to prevent deprivation of rights under the Commerce Clause.

Lighthouse asks the Court to enforce its dormant Commerce Clause rights under 42 U.S.C. § 1983, which creates a federal cause of action against "deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States.[78] The Ninth Circuit has repeatedly cautioned against abstaining in such section 1983 actions. In *Tovar v. Billmeyer*, for instance, the Court of Appeals described the usual presumption in favor of concurrent federal jurisdiction as "particularly weighty" when a plaintiff brings a section 1983 claim.[79] "[C]onflicting results, piecemeal litigation, and some duplication of judicial effort,"

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[73] *Sprint Commc'ns Inc. v. Jacobs*, 571 U.S. 69, 77(2013).

[74] Mot. at 16-24.

[75] *See UPS v. Cal. Pub. Utils. Comm'n*, 77 F.3d 1178, 1186 (9th Cir. 1996) (discussing *England v. La. State Bd. of Med. Exam'rs*, 375 U.S. 411 (1964)).

[76] *See id*.

[77] *Myer v. Cty. of Orange*, No. 89-56238, 1991 WL 21350, at *1 (9th Cir. Feb. 21, 1991).

[78] 42 U.S.C. § 1983.

[79] 609 F.2d 1291, 1293 (9th Cir. 1979); *see also Pearl Inv. Co. v. City and Cty. of San Francisco*, 774 F.2d 1460, 1463 (9th Cir. 1985); *UPS*, 77 F.3d at 1185; *Myer*, 1991 WL 21350, at *1.

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the court explained, "is the unavoidable price of preserving access to the federal relief which section 1983 assures."[80] Any factors normally favoring abstention are thus "of little weight" in a section 1983 case.[81]

For related reasons, Lighthouse's invocation of the Constitution's Commerce Clause presents special reasons to avoid abstention. "The federal interest asserted under the commerce power lies at the core of the commercial values protected by that clause, namely the promotion of robust trade and enterprise among the several states."[82] When such "an overwhelming federal interest" is at stake, "no state interest, for abstention purposes, can be nearly as strong at the same time."[83]

Both these lines of precedent counsel against applying any form of abstention here.

2. *Pullman* abstention is inapplicable to this case.

The Defendants first ask the Court to abstain from hearing Lighthouse's claims by invoking the *Pullman* doctrine—an "extraordinary and narrow exception to the duty of a district court to adjudicate a controversy."[84] The Ninth Circuit has made clear that because courts normally give "respect to a suitor's choice of a federal forum' . . . *Pullman* abstention should rarely be applied."[85] And "when the federal question at stake is one of federal preemption," *Pullman* is completely inapplicable[86]—meaning that it cannot apply to Lighthouse's ICCTA and PWSA claims.

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[80] *Tovar*, 609 F.2d at 1293.

[81] *Martinez v. Newport Beach City*, 125 F.3d 777, 782, 785 (9th Cir. 1997) ("[t]here is good reason for the disfavor with which our circuit has approached the potential application of *Younger/Colorado River* abstention to suits under § 1983 . . . [t]he federal remedy is supplementary to the state remedy"), vacated on other grounds by *Martinez v. City of Newport Beach*, No. 99-55006, 199 F.3d 1332 (9th Cir. 1999) (internal quotation marks omitted).

[82] *Harper v. Pub. Serv. Comm'n of W. Va.*, 396 F.3d 348, 350 (4th Cir. 2005).

[83] *Id*. at 356.

[84] *Courthouse News Serv. v. Planet*, 750 F.3d 776, 783 (9th Cir. 2014).

[85] *Porter v. Jones*, 319 F.3d 483, 492 (9th Cir. 2003) (quoting *Zwickler v. Koota*, 389 U.S. 241, 248 (1967)).

[86] *Fireman's Fund Ins. Co. v. City of Lodi*, 302 F.3d 928, 939 n.12 (9th Cir. 2002) (quoting *Hotel Emps. & Rest. Emps. Int'l Union v. Nev. Gaming Comm'n*, 984 F.2d 1507, 1512 (9th Cir. 1993)).

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The idea behind *Pullman* abstention—which had its "ignominious origins" in the Supreme Court's 1941 effort to avoid invalidating a Jim Crow law—is that courts can sometimes protect "the rightful independence of the state governments" and "the smooth working of the federal judiciary" by avoiding certain "sensitive" issues.[87] To keep the *Pullman* exception "extraordinary and narrow,"[88] the Ninth Circuit imposes "three independently mandated requirements" on it: (1) the case involves "a sensitive area of social policy" that federal courts should avoid unless there is no alternative; (2) "constitutional adjudication plainly can be avoided if a definite ruling on the state issue would terminate the controversy"; and (3) the determinative state law issue's "proper resolution" is "uncertain."[89] The absence of any one of these requirements precludes *Pullman* abstention.[90] None are satisfied here.

In an effort to meet the first *Pullman* prong, the Defendants try to recast Lighthouse's as-applied challenges to their permitting decisions as a broader attack on the state's "land use planning" scheme.[91] This mischaracterizes Lighthouse's claims. This case does not seek to invalidate any land use or zoning laws or regulations, only to curb the Defendants' abuse of those (and other) rules in a manner that violates the Commerce Clause.[92] The case on which the Defendants rely, by contrast, involved a facial challenge to a specific county land use plan.[93]

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[87] *Courthouse News*, 750 F.3d at 783 (quoting *San Remo Hotel v. City & Cty. of San Francisco*, 145 F.3d 1095, 1105 (9th Cir. 1998)).

[88] *Id*.

[89] *Id.* at 783-84 (quoting *Porter*, 319 F.3d at 492).

[90] *Porter*, 319 F.3d at 492.

[91] Mot. at 17.

[92] *See K&S Devs. LLC v. City of SeaTac*, No. C13-499-MJP, 2013 U.S. Dist. LEXIS 147574, at *7 (W.D. Wash. Oct. 10, 2013) ("[a]n as-applied challenge to a single real estate transaction between a city and a developer, however, bears scant resemblance to the politically delicate challenges to city-wide regulations" at issue in true *Pullman* land-use cases).

[93] *Sinclair Oil Corp. v. Cty. of Santa Barbara*, 96 F.3d 401 (9th Cir. 1996); *see also Kollsman v. City of Los Angeles*, 737 F.2d 830, 832 (9th Cir. 1984) (seeking to "invalidate" a "slope density formula" included in the city's "land use regulations").

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Furthermore, a constitutional challenge to state permitting decisions does not transform into a "sensitive social issue" merely because the underlying project is deemed controversial.[94]

To the extent the Defendants argue that "application of state environmental laws" also qualifies as an area of sensitive social policy best left to the states,[95] the Ninth Circuit disagrees. Because the federal government has already "entered the field" of environmental regulation, these issues cannot be described as "best left to the states."[96] Here, one of the key decisions at issue is a water quality certification request under section 401 of the federal Clean Water Act.[97] The Defendants accordingly cannot satisfy the first *Pullman* factor.

Nor can the pending state court proceedings moot or substantially alter Lighthouse's federal claims, as the second *Pullman* factor requires. Even if Lighthouse's subsidiary runs the table in state court, those victories would likely result in remands that would not prevent the Defendants from continuing to delay and deny the state permits for the proposed coal export facility. Lighthouse has learned through six years' hard experience that the Defendants have no intention of ever allowing new coal exports from Washington's ports.[98] The "delays inherent in the abstention process and the danger that valuable federal rights might be lost in the absence of expeditious adjudication in the federal court"[99] forcefully underscore the problem Lighthouse faces. Nothing short of a fully permitted facility could significantly affect Lighthouse's Commerce Clause claims, and that remedy is not available in any of the pending state court proceedings.

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[94] *See United States v. Morros*, 268 F.3d 695, 704 (9th Cir. 2001).

[95] Mot. at 17.

[96] *Fireman's Fund*, 302 F.3d at 940. Like CERCLA, the law at issue in *Fireman's Fund*, the Clean Water Act "envision[s] a partnership between various levels of government." *Id.*

[97] The Defendants' argument to the contrary rests on a single sentence in a distinguishable, pre-*Fireman's Fund* case that did not involve any federal environmental law. *U.S. v. California*, 639 F. Supp. 199, 207 (E.D. Cal. 1986).

[98] Compl. ¶¶ 70, 117-191.

[99] *Harris Cty. Commr's Court v. Moore*, 420 U.S. 77, 83 (1975).

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In addition, this Court has properly refused to apply *Pullman* abstention where a plaintiff's "federal claims require proof of different elements than the state claims."[100] That is certainly the case here, where Lighthouse's claims are being brought under section 1983's "supplement[al] remedy."[101] There is in fact ***no overlap*** between the elements of Lighthouse's section 1983 claims in this case and its subsidiary's claims in the state proceedings. The state law propriety of the Defendants' permitting decisions does not ultimately bear on their compliance with the Commerce Clause.

Finally, resolution of MBT-Longview's state law claims is not uncertain, at least as that term is used in *Pullman* abstention cases. An outcome is not uncertain "just because it turns on the facts of the particular case."[102] Instead, a federal court must be unable to predict with "any" confidence the way in which a state court would rule on an issue of "state law."[103] In any event, this case simply does not require the Court to address any issues of state law. The Defendants' actions violate Lighthouse's rights under the Commerce Clause regardless of their legality under state law, and Lighthouse's complaint does not raise any state law issues. *Pullman* abstention accordingly has no place in this litigation.[104]

3. *Colorado River* does not sanction abstention in a comprehensive federal court, federal law litigation like this one.

The Defendants also seek abstention under the test articulated by the U.S. Supreme Court in *Colorado River Water Conservation District v. U.S.*[105] "*Colorado River* stands for the proposition that when Congress has passed a law expressing a preference for unified state

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[100] *Hannum v. Wash. State Dep't of Licensing*, No. C06-5346RJB, 2006 U.S. Dist LEXIS 51213, at *9-10 (W.D. Wash. July 26, 2006) (Bryan, J.).

[101] *Martinez*, 125 F.3d at 782.

[102] *Pearl Inv. Co.*, 774 F.2d at 1465.

[103] *Id*.

[104] *Pullman* also has no place in this litigation as it would only "impose expense and [] delay" on an already long-delayed project. *Potrero Hills Landfill, Inc. v. Cty. of Solano*, 657 F.3d 876, 889 (9th Cir. 2011) (quoting *Zwickler*, 389 U.S. at 251).

[105] 424 U.S. 800 (1976).

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adjudication, courts should respect that preference."[106] Abstention under the eight-factor *Colorado River* test thus is—and should be—"exceedingly rare."[107] In light of the federal courts' "'virtually unflagging obligation to exercise the jurisdiction given them,' including in cases involving parallel state litigation," a stay "is the exception, not the rule."[108] This case does not fit the *Colorado River* mold.[109]

To begin with, the Defendants cannot cross factor eight's "threshold" because the state court proceedings cannot resolve all issues in this litigation.[110] This case turns on whether the Defendants can use their state permitting authority to prevent the transit of goods across state and international boundaries. Again, even if Lighthouse's subsidiary prevailed in every state case, it would not prevent the Defendants from continuing to delay and deny the approvals for its proposed coal export terminal. This case could. If there is "***any*** substantial doubt" about whether the state proceeding will "complete[ly]" resolve Lighthouse's claims, "it would be a serious abuse of discretion" to abstain.[111]

Recognizing that abstention is particularly inappropriate under factor eight when the federal case is more comprehensive than the state one,[112] the Defendants repeatedly portray this

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[106] *Morros*, 268 F.3d at 706.

[107] *Seneca Ins. Co. v. Strange Land, Inc.*, 862 F.3d 835, 841 (9th Cir. 2017).

[108] *Id.* (quoting *Colorado River*, 424 U.S. at 813, 817) (ellipsis omitted).

[109] Abstention under *Colorado River* involves consideration of eight factors:

> (1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court.

Id. at 841-42 (quoting *R.R. St. & Co. v. Transp. Ins. Co.*, 656 F.3d 966, 978-79 (9th Cir. 2011). The Defendants concede, and Lighthouse agrees, that the first two *Colorado River* factors are not applicable. Mot. at 20 n.8.

[110] Mot. at 20-21.

[111] *Smith v. Cent. Ariz. Water Conservation Dist.*, 418 F.3d 1028, 1033 (9th Cir. 2005) (emphasis added) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 28 (1983)); *see also Putz v. Golden*, No. C10-0741JLR, 2010 WL 5071270, at *7-8 (W.D. Wash. Dec. 7, 2010) (substantial doubt where, as here, multiple claims and parties did not overlap).

[112] *See Tucker v. Casual Male Retail Grp.*, No. C-04-1841, 2004 U.S. Dist. LEXIS 17822, at *7 (N.D. Cal. Aug. 30, 2004) (declining to abstain when "[t]here is no vastly more comprehensive state action pending").

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case as a "mere spin-off" of the state court litigation.[113] In reality, this federal litigation addresses in one place a pattern of illegal actions taken against the proposed coal export facility. And as already noted, Lighthouse's federal claims request broader relief on behalf of plaintiffs who are not party to any state proceeding.[114] Because this factor is a threshold requirement, the Defendants' failure to satisfy it "precludes" abstention.[115]

Factor five, the rule of decision, also strongly counsels against abstention. When abstention questions arise in the context of diversity actions, courts frequently face state law rules of decision. Here, however, the only rule of decision is federal law. The Defendants nonetheless try to waive off this key factor by claiming that it is "significant . . . only where *exclusive* federal jurisdiction is at issue."[116] That is wrong.[117] In fact, "the presence of federal-law issues must ***always*** be a major consideration weighing ***against*** surrender of jurisdiction."[118] Unlike most cases applying *Colorado River* abstention, the legal questions in this case are all questions of federal law.[119]

For several reasons, the state court proceedings are unable to protect Lighthouse's rights, as factor six requires. Most obviously, Lighthouse Resources, Inc. and three of its

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[113] Mot. at 21; *see id*. at 24.

[114] *See Extra Storage Space, LLC v. Maisel-Hollins Dev. Co.*, 527 F. Supp. 2d 462, 467 (D. Md. 2007) (insufficient parallelism where the "federal and state suits differ with respect to the parties involved, the issues alleged, and the [remedies] requested").

[115] *R.R. Street*, 656 F.3d at 982 (quoting *Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir. 1993)).

[116] Mot. at 23 (emphasis in original).

[117] *See, e.g.*, *Cal. River Watch v. Sweeney*, No. 2:16-cv-02972-KJM-KJN, 2017 WL 4248013, at *6 (E.D. Cal. Sep. 22, 2017) (factor "weigh[ed] against abstention" where federal law governed the federal proceeding and state environmental law governed the state proceeding); *Strategic Pharm. Solutions, Inc. v. Nev. State Bd. of Pharm*, No. 2:16-cv-171-RFB-VCF, 2016 U.S. Dist. LEXIS 68029, at *7 (D. Nev. May 23, 2016) (factor "weigh[ed] against a stay" where the "state law claim [was] ancillary"); *Keller Transp., Inc. v. Wagner Enters., LLC*, 873 F. Supp. 2d 1342, 1356-57 (D. Mont. 2012) (factor "weigh[ed] against a stay" where state law governed state proceedings and federal law governed federal proceeding).

[118] *Strange Land*, 862 F.3d at 844 (emphasis added). By contrast, the presence of state-law issues favors surrender only in "rare circumstances." *Id*. (quoting *Cone Mem'l Hosp.*, 460 U.S. at 26).

[119] *See, e.g.*, *Montanore Minerals Corp. v. Bakie*, 867 F.3d 1160, 1168-69 (9th Cir. 2017) (abstaining where state "eminent domain law provided the rule of decision on the merits in the federal action"); *R.R. Street*, 656 F.3d at 980-81 (abstaining where "state law provide[d] the rules of decision for all of [the plaintiffs'] claims").

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subsidiaries are not party to any of the state proceedings.[120] The remedies Lighthouse seeks here are also beyond the scope of the state proceedings, which are focused on specific state permitting claims.[121] In addition, Lighthouse's section 1983 claims are uniquely protectable in federal court.[122] This factor is "more important when it weighs in favor of federal jurisdiction," as it does here.[123]

The Defendants inaptly accuse Lighthouse of forum shopping—factor seven—for exercising their state rights of appeal. To evaluate forum shopping, district courts ask whether "either party improperly sought more favorable rules in its choice of forum or pursued suit in a new forum after facing setbacks in the original proceeding."[124] A party is not forum shopping when it "act[s] within [its] rights in filing a suit in the forum of [its] choice . . . ."[125] The Ninth Circuit is particularly "cautious" to label as forum shopping "a plaintiff's desire to bring previously unasserted claims in federal court."[126] That is precisely what Lighthouse is doing here. The mere fact that MBT-Longview is following state-prescribed rules for appealing the Defendants' array of permit denials does not transform Lighthouse's effort to vindicate federal rights in federal court into forum shopping.[127]

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[120] *See Medina v. Becerra*, No. 3:17-cv-03293-CRB, 2017 U.S. Dist. LEXIS 189935, at *22 (N.D. Cal. Nov. 16, 2017) (federal courts "generally do not abstain when the federal plaintiff is not a party to the pending state proceeding—even if the plaintiff has an opportunity to intervene").

[121] The state forums are also potentially tainted by the influence of the very decisionmakers Lighthouse is suing here. All three members of the PCHB are appointed by the governor for staggered six-year terms; in fact, Governor Inslee himself appointed every sitting PCHB member, including one appointed just a few months ago. State of Wash. Envtl. & Land Use Hearings Office, *About the PCHB*, http://www.eluho.wa.gov/Board/PCHB (last visited May 2, 2018). Four of the six SHB members are the Defendants or their appointees. State of Wash. Envtl. & Land Use Hearings Office, *About the SHB*, http://www.eluho.wa.gov/Board/SHB (last visited May 2, 2018). Three SHB members are the PCHB appointees, while another is Commissioner Franz or her designee. *Id.* And the only "full-time" SHB members are the three PCHB appointees. *Id.*

[122] *Tovar*, 609 F.2d at 1293 ("conflicting results, piecemeal litigation, and some duplication of judicial effort is the unavoidable price of preserving access to the federal relief which section 1983 assures").

[123] *R.R. Street*, 656 F.3d at 981 (quoting *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364, 1370 (9th Cir. 1990)).

[124] *Strange Land*, 862 F.3d at 846.

[125] *Id.* (citing *Madonna*, 914 F.2d at 1371).

[126] *R.R. Street*, 656 F.3d at 982.

[127] *See Strange Land*, 862 F.3d at 846; *R.R. Street*, 656 F.3d at 982.

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The "mere possibility" of piecemeal litigation—factor three—does not constitute an exceptional circumstance for purposes of *Colorado River* abstention.[128] Rather, "the avoidance of piecemeal litigation factor is met . . . only when there is evidence of a strong federal policy that all claims should be tried in the state courts."[129] No such policy is present here. The Defendants do not point to any "special concern" about piecemeal litigation that a stay or dismissal can remedy.[130] Absent a strong federal policy for state litigation or a similar special concern, this factor does not support abstention.[131]

Again, the Defendants bend over backwards to frame the state court proceedings as "more comprehensive" than this case, when in reality, the reverse is true. Each state proceeding concerns an individual permit denial: a discrete, compartmentalized piece of the much broader controversy addressed in full in this case. And because this litigation presents different claims, asks for broader relief, and involves distinct parties, there is little risk of actual piecemealing.[132] In any event, as already mentioned, the Ninth Circuit has long held that "conflicting results, piecemeal litigation, and some duplication of judicial effort is the unavoidable price of preserving access to the federal relief which section 1983 assures."[133]

The fourth factor, the order in which the forums obtained jurisdiction, must be applied "in a pragmatic, flexible manner with a view to the realities of the case at hand."[134] District courts do not "simply [] compare filing dates," but must instead "analyze the progress made in

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[128] *R.R. Street*, 656 F.3d at 979.

[129] *Morros*, 268 F.3d at 706-07 (quoting *Ryan v. Johnson*, 115 F.3d 193, 197-98 (3d Cir. 1997)).

[130] *R.R. Street*, 656 F.3d at 979 (quoting *Madonna*, 914 F.2d at 1369).

[131] *See Strange Land*, 862 F.3d at 843*; see also Kennedy v. Phillips*, No. C11-1231-MJP, 2012 WL 261612, at *6 (W.D. Wash. Jan. 30, 2012) ("The possibility of inconsistent rulings on the same issues does not support abstention because the first-rendered judgment will be res judicata in the other proceeding.").

[132] *See Waters v. Advent Prod. Dev.*, No. 07-cv-2089-BTM(LSP), 2008 WL 7683231, at *11 (S.D. Cal. June 26, 2008) (no piecemealing where the federal claims were "much broader in scope and different in nature than the [] relief claim before the [state] court").

[133] *Tovar*, 609 F.2d at 1293.

[134] *R.R. Street*, 656 F.3d at 980 (quoting *Cone Mem'l Hosp.*, 460 U.S. at 21).

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each case."[135] This forum is the first and only one to obtain jurisdiction over claims brought by the non-MBT-Longview plaintiffs. It thus has primacy over every claim brought by Lighthouse Resources, Inc., Lighthouse Products, LLC, LHR Coal, LLC, and LHR Infrastructure, LLC. These entities' claims developed later than any individual permit denials, as the Defendants' illegal conduct snowballed.

Nor is the Defendants' argument much stronger against MBT-Longview alone. Just one state case, the sublease litigation, has meaningfully progressed. Since no other state proceeding has resolved any "foundational legal claims," those cases stand on the same footing as this one.[136] State cases typically must be much further ahead of a federal case—multiple years and many dispositive decisions, not a few months and some preliminary motion practice—for this factor to favor abstention.[137]

* * *

When considering the *Colorado River* factors, the Court should begin "with the balance heavily weighted in favor of the exercise of jurisdiction."[138] Add to that the "particularly weighty" section 1983 presumption, and it becomes clear that the Court cannot abstain here.[139]

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[135] *Strange Land*, 862 F.3d at 843.

[136] *Id.* As of this filing, MBT-Longview's successful challenge to DNR's sublease denial is being appealed. On March 2, 2018, the Cowlitz County Superior Court dismissed MBT-Longview's challenge to Ecology's section 401 certification denial while MBT-Longview pursues its administrative remedies with PCHB. The parties to the PCHB appeal of Ecology's CWA section 401 certification denial recently filed briefs arguing for summary judgment on certain legal issues. On April 20, 2018, the Shoreline Hearings Board affirmed the Cowlitz County Hearing Examiner's denial of the shoreline permits sought by MBT-Longview.

[137] *See, e.g.*, *Montanore*, 867 F.3d at 1168 (factor favored abstention where the plaintiff "had already been litigating the state case for six years" and "[t]he parties had conducted extensive discovery, filed cross-motions for summary judgment, and the state court had issued an order deciding several issues"); *R.R. Street*, 656 F.3d at 980 (factor favored abstention where the state court "had conducted discovery, initiated a phased approach to the litigation and issued an order concerning foundational legal matters" over four years before the federal companion case was filed); *Nakash v. Marciano*, 882 F.2d 1411, 1415, 1417 (9th Cir. 1989) (factor favored abstention where the state court had, "after three and one-half years," progressed "far beyond" the federal case).

[138] *Strange Land*, 862 F.3d at 846 (quoting *Madonna*, 914 F.2d at 1372).

[139] *See Cartwright v. Univ. of Cal.*, No. 2:05-cv-0725-MCE-KJM, 2006 WL 902568, at *8 (E.D. Cal. Apr. 5, 2006) ("[p]laintiff's section 1983 claims serve as a final deathblow to any lingering uncertainty as to whether abstention is appropriate in the instant matter").

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Abstention of any sort—*Pullman*, *Colorado River*, or otherwise—would risk a "serious abuse of discretion."[140]

IV. CONCLUSION

The Constitution and laws of the United States task the federal government, not the individual states, with regulating foreign and interstate commerce—including rail transportation and national and international maritime trade. When state officials transgress that boundary, as the Defendants have done here, injured parties can seek relief in federal court. Lighthouse accordingly asks that the Defendants' motion to dismiss or abstain be denied.

DATED this 8th day of May, 2018.

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[140] *Cent. Ariz. Water Conservation Dist.*, 418 F.3d at 1033 (emphasis added) (quoting *Cone Mem'l Hosp.*, 460 U.S. at 28).

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 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 the filing to all counsel of record.

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