

### 3. Washington AG Bob Ferguson, Backed by Six Additional AGs, Urges 9th Circuit to Uphold Permit Denial for Proposed Coal Terminal

**Washington Attorney General Bob Ferguson** filed a [brief](#) in the U.S. Court of Appeals for the Ninth Circuit on December 30 in support of a district court finding that the Interstate Commerce Commission Termination Act (ICCTA) does not preempt Washington's decision to deny water quality certification for the proposed Millennium Bulk Terminal project under state law. If constructed, the Millennium Bulk Terminal would be the largest coal export facility in North America, primarily handling coal transported by rail from Montana, Wyoming, Colorado and Utah. In the brief, **AG Ferguson** emphasizes that the permit denial decisions "are clearly within the State's authority to make," and warns that the plaintiffs' constitutional claims "constitute nothing more than an attempt to run roughshod over state land use laws and procedures."

A coalition of six states led by **California Attorney General Xavier Becerra** filed an [amicus brief](#) on January 6 in support of Washington's position. The AGs warn that the notion of ICCTA preemption is a "radical reformulation of historic police-power authority [that], if accepted by the Court, would cripple Amici States' ability to perform discretionary land use functions" necessary to protect the health, safety, and welfare of their citizens — an authority that "has been recognized for generations." The attorneys general of Maryland, Massachusetts, New Jersey, New York and Oregon joined California in filing the brief.





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