



Bob Ferguson  
**ATTORNEY GENERAL OF WASHINGTON**

Administration Division  
PO Box 40100 • Olympia WA 98504-0100 • (360) 753-6200

November 21, 2018

Lieutenant General Todd T. Semonite  
Commanding General and Chief of Engineers  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314-1000

**RE: Millennium Bulk Terminals-Longview Proposed Coal Export Terminal**

Dear Lieutenant General Semonite:

I write to share my deep concern with the U.S. Army Corps of Engineers' recent decision to restart the federal permitting and environmental review process for the above-referenced project.

In September 2017, the Washington State Department of Ecology denied water quality certification for the project under section 401 of the federal Clean Water Act, specifically finding that:

- 1) The permit application and supporting documents submitted by the company did not provide reasonable assurance that the project would meet the state water quality standards approved by the Environmental Protection Agency; and
- 2) The project would have resulted in unavoidable and adverse impacts to the local environment, transportation, public health, the local community, and tribal resources.

In the time since Ecology denied water quality certification, the proponent of the project has filed five separate lawsuits and appeals against Ecology. Four have been resolved in Ecology's favor. The fifth is pending in federal district court.

On September 5, 2018, Seattle District Commander Colonel Mark Gerald notified the Director of the Department of Ecology that the federal environmental review and processing of the federal permit for the project is being restarted. This action would contradict long-standing procedure, precedent and legal principles.

A vital component of the system of cooperative federalism adopted by Congress in the Clean Water Act is state authority to condition or deny certification of discharges into waters of the



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United States under Section 401. This authority helps ensure that activities associated with federally permitted discharges will not impair state water quality. The U.S. Supreme Court addressed this issue of state authority and concluded that, “[s]tate certifications under [Section] 401 are essential in the scheme to preserve state authority to address the broad range of pollution.” *S.D. Warren Co. v. Maine Board of Environmental Protection*, 547 U.S. 370 (2006), citing 116 Cong. Rec. 8984 (1970).

The record demonstrates this project would damage water quality in the Columbia River, destroy wetlands, increase cancer risk rates in a nearby low income and minority community, cause traffic congestion, noise, and increased rail and vessel accident rates statewide, and impair tribal fishing.

The Department of Ecology thoroughly and properly considered these impacts in denying water quality certification to the project over a year ago. Reopening the federal review process at this time would significantly damage the cooperative state/federal partnership that exists in managing water resources and control of pollution. It also would represent a significant legal error as described in detail in the enclosed letter from my office dated October 10, 2018.

In short, Washington State has denied water quality certification of the Millennium Bulk Terminals-Longview Proposed Coal Export Terminal because the project failed to meet our federally-approved water quality laws and because it has the potential to impose a host of other harmful impacts on our state’s residents. This denial precludes the federal government from issuing any federal permits for the project. Washington State is prepared to defend the health, safety, and welfare of our local communities and our state’s waters.

I urge you to respect the state/federal partnership and the law that underlies the Clean Water Act and section 401, and discontinue any further federal review of this project.

Sincerely,



BOB FERGUSON  
Washington State Attorney General

RWF/jlg  
Enclosure

cc: Andrew Wheeler, Acting Administrator, U.S. Environmental Protection Agency  
Colonel Mark A. Gerald, Seattle District Commander, U.S. Army Corps of Engineers  
Chris Hladick, Region 10 Administrator, U.S. Environmental Protection Agency