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**BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

AIRPORT COMMUNITIES
COALITION,

Appellant,

CITIZENS AGAINST SEA-TAC
EXPANSION,

Intervenor/Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY; and
PORT OF SEATTLE,

Respondents.

PCHB No. 01-160

DIRECT TESTIMONY OF GORDON
WHITE SUBMITTED ON BEHALF
OF THE DEPARTMENT OF
ECOLOGY

AR 003009

ORIGINAL

1 Gordon White declares as follows:

2 **I. Introduction**

3 1. I am currently employed by the Department of Ecology (Ecology) as the
4 Program Manager for the Shorelands and Environmental Assistance (SEA) program. I have
5 held that position since 1997. A copy of my resume is attached to my testimony as Attachment
6 A.

7 2. The SEA program is responsible for implementing the state's role under the
8 Shoreline Management Act, the Coastal Zone Management Act, the State Environmental
9 Policy Act, Flood Plain Management, issuance of Clean Water Act § 401 Water Quality
10 Certifications, and the Watershed Planning Act. In addition the program is responsible for the
11 state's role in the management of wetlands, and administers the Washington Conservation
12 Corps, the Padilla Bay National Estuarine Research Reserve, the Permit Assistance Center, and
13 Department of Transportation Project Coordination.

14 3. Ecology is comprised of a Headquarters staff located in Lacey, Washington,
15 four regional offices (Northwest-Bellevue, Southwest-Lacey, Central-Yakima and Eastern-
16 Spokane) and several field offices. The majority of the individuals employed at Ecology's
17 Headquarters are involved in policy development. Staff in the regional offices and field offices
18 focus on carrying out Ecology's regulatory responsibilities. The SEA program has staff at
19 Headquarters and all of the regional offices. In addition we have one SEA Program staff
20 located in the Bellingham Field Office, one in a multi-agency field office in Walla Walla, and
21 one in a multi-agency field office in Twisp.

22 4. As Program Manager, it is my responsibility to oversee the section supervisors
23 who directly manage program staff. The Director of the Department of Ecology has authorized
24 me to exercise my delegated authority pursuant to the following statutes: State Environmental
25 Policy Act (RCW Chapter 43.21 C); Shoreline Management Act (RCW 90.58); Growth
26 Management Act (RCW 36.70A); Model Toxics Control Act (RCW 82.34); Water Pollution

1 Control Act (RCW 90.48); Flood Plain Management (RCW 86.16 and 86.24); and Wetlands
2 Mitigation Banking (RCW 90.84). The Director has delegated to me the authority to: (a) issue
3 Notices of Violations; (b) issue Administrative Orders; (c) issue and revoke permits and
4 licenses, and assess permit fees; (d) approve plan reviews; (e) make decisions regarding
5 applications for Clean Water Act § 401 Certifications; and (f) approve wetland mitigation
6 banking certifications.

7 **II. Ecology's Federal Permit Program**

8 5. As stated above, the SEA program is responsible for implementing Ecology's
9 responsibilities under § 401 of the Clean Water Act (CWA) and under the Coastal Zone
10 Management Act (CZMA). The Federal Permits program within the SEA Program addresses
11 requests for CWA § 401 Certifications (401 Certification) and concurrency statements under
12 the CZMA.

13 6. Under § 401 of the CWA, an applicant for a federal license or permit that will
14 result in a discharge into navigable waters (*e.g.*, a CWA § 404 dredge or fill permit, a FERC
15 license for a hydroelectric facility), must obtain from the state where the discharge originates a
16 certification that the discharge will comply with applicable water quality standards. The
17 federal license or permit cannot issue until a 401 Certification is obtained. Under § 401, the
18 state has up to one year from the date of the application to issue or deny a certification. If the
19 state does not act within the one year timeframe, it is deemed to have waived certification.

20 7. Applicants for such federal licenses or permits prepare a Joint Aquatic Resource
21 Permit Application (JARPA) and submit that application to the appropriate federal agency and
22 Ecology's SEA program. In addition to the federal license or permit, the JARPA requests that
23 Ecology issue a 401 Certification for the proposed project. Public notice of the application is
24 issued, a written comment period is designated, and a public hearing held.

25 8. As with the 401 Certification, Ecology's SEA Program is responsible for
26 responding to a request for CZMA consistency determination. Under the CZMA, any
applicant for a federal permit to conduct activities affecting land or water uses in a state's

1 coastal zone¹ must certify that the proposed activities comply, and will be conducted in a
2 manner consistent, with the state's approved Coastal Zone Management Program (CZMP). To
3 meet the requirements of Washington's CZMP, the federal activity proposed for the coastal
4 zone must comply with the enforceable policies within the six laws identified in the CZMP.
5 Those laws are: (a) the Shoreline Management Act; (b) the State Environmental Policy Act;
6 (c) the Clean Water Act; (d) the Clean Air Act; (e) the Energy Facility Site Evaluation Council;
7 and (f) the Ocean Resource Management Act.

8 9. The process is begun by the applicant submitting a statement to Ecology
9 certifying that its project is consistent with the state's CZMP. Ecology has six months in
10 which to concur with or object to the certification. If Ecology fails to notify the federal
11 permitting agency of its concurrence or objection within those six months, Ecology's
12 concurrence with the certification is conclusively presumed. The federal permitting agency
13 may not grant a license or permit until Ecology affirmatively concurs, or by failing to act its
14 concurrence is presumed, unless the Secretary of Commerce finds the activity is consistent
15 with the CZMA or is otherwise necessary in the interest of national security.

16 10. In this instance, the Port of Seattle (Port) applied for a CWA 404 Permit (404
17 Permit) from the Army Corps of Engineers (Corps) in order to fill wetlands, which constitute
18 waters of the United States and the state of Washington. In that application, the Port also
19 sought a 401 Certification from Ecology. In a separate submittal, the Port certified that its
20 project was consistent with the state's CZMP.

21 III. 401 Certification Process

22 11. As stated above, Ecology's SEA Program is responsible for addressing
23 applications for CWA § 401 Certifications. The majority of Ecology's 401 Certification
24 activities occur in the SEA Program's regional offices, where a staff lead (401 Certification
25

26 ¹Washington's CZMP defines the state's coastal zone to include the 15 counties with marine shorelines:
Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish,
Thurston, Wahkaikum, and Whatcom counties.

1 Reviewer) works with agency experts in evaluating specific project proposals. Depending
2 upon the nature and complexity of the project, there may be several agency experts from
3 various programs assisting with review of the project.

4 12. The role of the 401 Certification Reviewer is to:

5 a. Coordinate review of the project by the team of Ecology experts;

6 b. Facilitate communication between the review team and the project proponent
7 and other interested parties;

8 c. Ensure that the team of Ecology experts has the information available to make
9 determinations that the project can or cannot meet applicable water quality
10 standards;

11 d. Assist the team in identifying key environmental and policy issues posed by the
12 project;

13 e. Based upon recommendations from the team of experts, develop a draft 401
14 Certification decision (approval or denial) for review and approval by the
15 regional section supervisor or program manager.

16 13. Prior to 1998, 401 Certification review was performed by SEA Program staff
17 assigned to Ecology's Headquarters. In 1998, Ecology elected to regionalize the 401
18 Certification review function. One of the reasons for the shift was to permit a more efficient
19 review of projects needing a 401 Certification. All other permit and technical review staff in
20 other agency programs, as well as the SEA Program, are assigned to the regional office.
21 Therefore, the individuals comprising the 401 Certification review team are stationed in the
22 regional offices. Assigning the 401 Certification Reviewer to the regional offices made it
23 easier and more efficient for those individuals to work with the key technical staff they rely
24 upon to review projects. In addition, the 401 Certification Reviewer and technical staff would
25 be more accessible to interested parties and project proponents.

26 **AR 003013**

1 14. The role of the Section 401 Certification Reviewer did not change when the
2 function was regionalized. At the time the Section 401 Certification review function was
3 assigned to regional staff, Headquarters staff was enlisted to train the regional staff as a means
4 of maintaining consistency in how the 401 Certification review was performed.

5 15. On complex and controversial projects, Ecology's Regional Director for the
6 region where the project will take place is typically assigned the role of facilitating review of
7 the project by Ecology's team of experts. Examples of such projects include the Port's project
8 at issue in this case, Second Tacoma Narrows Bridge Project, Columbia River Channel
9 Deepening, 304th Street Landfill, Crown Jewel Gold Mine, and the Stafford Creek
10 Correctional Facility.

11 16. As stated above, the Program Manager of the SEA Program has delegated
12 authority from the Director of the Department of Ecology to approve or deny 401
13 Certifications. In turn, the Program Manager delegated this authority to the regional section
14 supervisors in the SEA Program. Typically, the regional supervisors make the final decisions
15 on a 401 Certification. The Program Manager is consulted on projects that pose important
16 policy questions. However, it is Ecology's policy that when a project is particularly complex
17 and controversial, the Program Manager will make the final decision. The purpose of that
18 policy is to ensure that executive management is clearly aware of and has been involved in the
19 decision, and that the decision clearly represents the agency's position on the particular
20 proposal.

21 17. In carrying out its responsibilities under § 401 of the CWA, the goal of the SEA
22 program's permitting process is to minimize environmental impacts by ensuring that projects
23 comply with state environmental requirements. In pursuit of this, Ecology approves, denies, or
24 conditions projects to protect water quality, quantity, sediment quality, and fish and shellfish
25 habitat.

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AR 003014

1 18. The key criteria in a 401 Certification decision is whether the project, as
2 proposed by the applicant and conditioned by Ecology, can be reasonably assured of
3 complying with applicable water quality standards. This standard of review has two parts:

- 4 a. Is there a preponderance of evidence that the project will meet water quality
5 standards?
6 b. Identifying any areas of uncertainty and addressing those issues through
7 conditions that remove or reduce the uncertainty.

8 Important information considered in this process includes:

- 9 • Identification of key threats to water quality;
10 • Information from the public during the public comment period;
11 • Submittals by the applicant that attempt to demonstrate that the project will
12 meet water quality standards;
13 • Assurance that mitigation and other conditions will be implemented; and
14 • Identification of any information gaps that diminish reasonable assurance.

15 Where a 401 Certification includes conditions, reasonable assurance is predicated upon the
16 recipient of the certification's compliance with those conditions. This includes implementation
17 of mitigation plans, submittal of additional information, and conducting required monitoring.

18 The conditions contained in the 401 Certification become conditions of the 404 Permit issued
19 by the Corps. If a permit holder does not comply with a 401 Certification condition, Ecology
20 may refer the matter to the Corps for enforcement or use its enforcement authority under ch.
21 90.48 RCW.

22 19. During Ecology's 401 Certification review, the 401 Certification Reviewer is in
23 communication with the Ecology manager designated to make the final decision on the
24 certification request. In addition, the manager may participate in meetings of the 401
25 Certification review team, meet with the applicant, and meet with individuals or groups
26 interested in the proposed project.

AR 003015

1 the applicant. If the project is found not to be consistent with Washington's CZMP, a letter
2 objecting to consistency is issued.

3 V. Review Of The Port's Project

4 24. The Port's proposed Master Plan Update improvements for the Seattle-Tacoma
5 International Airport falls into the class of projects that are complex and controversial.
6 Ecology determined that the Program Manager for the SEA Program would sign the final
7 decision on the Port's application for a 401 Certification and CZMA concurrency. It was also
8 determined that supervision of the agency's review of the project would be managed by
9 Ecology's Northwest Regional Office Director. That position was held by Mike Rundlett until
10 he retired in 1999 and was succeeded by Ray Hellwig.

11 25. As indicated above, the 401 Certification review function was transferred to the
12 regional offices in 1998. The shift in that responsibility to the regional offices, along with the
13 Port's withdrawal and reapplication for a Section 404 permit and 401 Certification in October,
14 2000, resulted in the reassignment of the 401 Certification review role from Ecology
15 Headquarters to the Northwest Regional Office, with Ann Kenny assuming the position of 401
16 Certification Reviewer. Similar to other complex 401 Certification reviews, Ms. Kenny
17 supported the Regional Director by coordinating Ecology staff review, maintaining lists of key
18 issues and facilitating staff level project review meetings. See Testimony of Ann Kenny for a
19 description of the Port's project and the agency's review.

20 26. As the individual with responsibility for making Ecology's final decision on the
21 Port's application, I kept abreast of the agency's review of the project through periodic status
22 updates provided by the 401 Certification Reviewer and the team of technical experts. This
23 consisted of regular status updates provided by Mr. Hellwig and Ms. Kenny. I also read
24 meeting notes from the regular facilitated meetings held between Ecology and the Port
25 beginning in October 2000. I met with Port officials working on the project during a site visit
26 in July, 2001. In addition, I met with members of ACC on July 10, 2001 and CASE on

1 August 6, 2001 to discuss the specific concerns those groups had with the project. I also
2 reviewed e-mails and letters I received from opponents and proponents of the project.

3 27. On July 17, 2001, I attended a meeting with members of the 401 Certification
4 technical review team (Ms. Kenny, Kevin Fitzpatrick, Erik Stockdale, Kelly Whiting). At the
5 meeting I was given a briefing on the status of the technical team's review of the project. At
6 this briefing I learned that submittals by the Port regarding the Comprehensive Stormwater
7 Management Plan (CSMP) had been reviewed by Ecology's technical staff. Mr. Fitzpatrick
8 informed me that he had reasonable assurance that, with some additional conditions, the
9 provisions of the CSMP would address the project's stormwater impacts and that the retrofit of
10 the Port's existing stormwater facilities would result in an overall improvement in the level of
11 stormwater management versus the water quality conditions existing prior to the project. Mr.
12 Fitzpatrick advised that staff would be completing a final review of the CSMP to make sure
13 that impacts of stormwater during low flow periods were adequately addressed and that the
14 CSMP and the Port's low flow plan were consistent with one another. I was subsequently
15 informed by Ms. Kenny that this review had been completed and the issue resolved to
16 Ecology's satisfaction.

17 28. In addition, Mr. Stockdale informed me that he had reasonable assurance that
18 the Natural Resource Mitigation Plan submitted by the Port, combined with conditions placed
19 in the 401 Certification, adequately mitigated for the impacts of the project to wetland and
20 stream functions. Ms. Kenny reported that the issues relating to acceptable fill criteria were
21 addressed to the satisfaction of the Toxics Clean-up Program technical staff.

22 29. During the three weeks prior to the issuance of the 401 Certification on August
23 10, 2001, Ms. Kenny provided me with daily updates on the progress the review team was
24 making in reviewing elements of the Port's submittals and in drafting conditions for a
25 certification. Ms. Kenny sent me two or three drafts of the 401 Certification for my review and
26 comment. I also discussed the 401 Certification with Ms. Kenny, Mr. Stockdale, Mr. Hellwig

1 and Joan Marchioro during a meeting on August 7, 2001. The focus of this meeting was to
2 fine tune conditions that would appear in the 401 Certification. During this meeting Ms.
3 Kenny re-affirmed for me that it was her recommendation and that of the agency's team of
4 technical experts that a 401 Certification should be issued as there was reasonable assurance
5 that the project as proposed and conditioned would comply with applicable water quality
6 standards. Ms. Kenny also confirmed that the Port's project was consistent with Washington's
7 CZMP and that CZMA concurrence should be issued. I asked Ms. Kenny if the project was
8 consistent with all elements of the state's CZMP and she reviewed with me how the project
9 was consistent with each of the four areas identified in paragraph 22 above. I agreed with Ms.
10 Kenny's analysis and approved the CZMA concurrence.

11 30. In making my decision to accept the recommendation I focused on the key
12 impacts the project would have on water quality and how the Port's proposal and Ecology
13 conditions would ensure the applicable water quality standards would be met. I applied the
14 process for determining reasonable assurance outlined above in paragraph 18. At the
15 aforementioned meetings with the 401 Certification review team, I reviewed with staff the
16 basis for their determination of reasonable assurance, having them explain to me the impact of
17 the project to water quality and aquatic resources, and how the Port's submittals and Ecology's
18 conditions would address these impacts.

19 31. Following issuance of the 401 Certification on August 10, the Port contacted
20 Ecology to discuss questions it had regarding conditions in the certification. Ecology staff met
21 with the Port to discuss those questions. The concerns raised by the Port were reviewed by the
22 technical review staff and, where appropriate, Ecology agreed to clarify certain conditions in
23 the 401 Certification. I reviewed the Ports questions with Ms. Kenny and Ms. Marchioro and
24 agreed that it would benefit implementation of the 401 Certification to amend the certification
25 to clarify certain conditions. An Amended 401 Certification was drafted for my review and
26 approval. Ms. Kenny informed me that she and the technical staff continued to have

1 reasonable assurance that the project would meet applicable water quality standards and that
2 their recommendation was the Amended 401 Certification be issued to the Port. I concurred
3 that the amendments to the 401 Certification did not alter my earlier determination of
4 reasonable assurance and, therefore, I signed the Amended 401 Certification on September 21,
5 2001.

6 VI. Conclusion

7 32. During Ecology's review of this project, the agency consistently and fairly
8 applied the applicable environmental laws. Consistent with these laws, Ecology's objectives
9 for the project were to ensure that the project would not degrade water quality and aquatic
10 resources in the sub-basins surrounding the Sea-Tac International Airport. To achieve these
11 objectives Ecology's review team provided the highest level of scrutiny and thoroughness to
12 this project. This level of review was greater than any I have ever witnessed in my twenty
13 years of working on environmental and natural resource protection issues in local and state
14 government. The team of staff experts and consultants that Ecology assigned to this project
15 were of the highest quality and expertise the agency has to offer. The 401 Certification
16 reflects this high degree of thoroughness and expertise. It contains technically feasible and
17 enforceable conditions and mitigation measures that will result in the protection of water
18 quality and aquatic resources.

19 33. In approving the 401 Certification for the Port's project I determined that there
20 was reasonable assurance that the project, as proposed by the Port and with conditions
21 imposed by Ecology, would meet applicable water quality standards. My decision was based
22 upon the thorough review of the project by Ecology's team of technical experts and their
23 recommendations that they had reasonable assurance that the project would meet applicable
24 water quality standards.

25
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AR 003020

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3 DATED this 7th day of March, 2002 at Lacey, Washington.

4 *Gordon White*
5 GORDON WHITE
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 7th day of March, 2002 at Lacey, Washington.

Gordon White
GORDON WHITE

GORDON WHITE
Program Manager
Shorelands and Environmental Assistance
Department of Ecology
300 Desmond Drive, Lacey
P.O. Box 47600
Olympia, Wa. 98504-7600

EMPLOYMENT HISTORY
PROGRAM MANAGER

Washington State Department of Ecology 1997 – Present

Manage the Shorelands and Environmental Assistance Program, a diverse program with the lead state role in the state's Shoreline Management Act, State Environmental Policy Act, 401 Water Quality Certifications, Watershed Planning Act and Flood Plain Management. This program is also responsible for coordinating Ecology's review of Growth Management Plans, operating an environmental permit assistance center and running Ecology's Washington Conservation Corps. The program has a 23 million dollar annual budget and 150 employees.

WATER RESOURCES PROGRAM MANAGER

Thurston County; 1990 - 1997

Manage a wide variety of water related projects and programs bringing an integrated and collaborative approach to solving water quality, water quantity, flooding and habitat problems. Develop county water related policies and ordinances in collaboration with stakeholder groups, other county departments, state and federal agencies. Managed highly complex and contentious issues ranging from ground water protection to flood hazard management. Strong record of performance bringing together county, state, and federal expertise to resolve these issues. Trusted to represent Thurston County Board of Commissioners on a variety of intergovernmental and interagency groups involving water related issues. Provide support to Thurston County Board of Commissioners in decision making regarding water related issues.

ASSOCIATE PLANNER

Thurston Regional Planning Council; 1987 - 1990

Managed data base services for wide variety of planning projects, providing research and analysis on land use and natural resource issues throughout Thurston County.

ASSISTANT PLANNER

Thurston Regional Planning Council; 1984 - 1987

Developed environmental and natural resource protection policies for the Thurston County Comprehensive Plan. Managed Comprehensive Plan public meetings and hearings. Provided staff support to county agricultural advisory committee.

OWNER AND OPERATOR POTATO FARM

Grays Harbor and Thurston Counties; 1982-1993

Managed all facets of potato growing operations with nationwide sales. Served on the board of state wide grower marketing cooperative.

LAND USE PLANNER

AR 003023

Attachment A

Grays Harbor Regional Planning Commission; 1978 - 1981

Assisted in the development of Comprehensive Land Use Plans for five rural communities in eastern Grays Harbor County. Lead planner for the development of county agricultural protection plan;

AREAS OF EXPERTISE AND EXPERIENCE

Management Experience:

- Four years as the lead manager of the state's role in Shoreline Management, Coastal Zone Management Act, Flood Plain Management, 401 Water Quality Certifications, State Environmental Policy Act, and Watershed Planning Act
- Managing the interaction of state, local, and federal policies with regard to the above authorities especially as regards to the Endangered Species Act and the Clean Water Act
- Managing major statewide policy initiatives and a diverse professional staff of 150 people
- Extensive experience managing interdepartmental staff teams in Thurston County on a variety of growth management and water related activities, involving the departments of Environmental Health, Water and Waste Management, Roads and Transportation Services, Development Services and Advanced Planning
- Lead staff in developing major environmental policies for Thurston County
- Represented Thurston County Board of Commissioners in providing testimony to the Washington State Legislature

Budgeting Experience:

- Four years experience managing the preparation, implementation and monitoring of a 23 million dollar annual budget
- Four years experience administering 15 million dollar capital fund and grant programs
- Twelve years experience preparing budgets for a variety of water resource, water quality, and land use planning projects in Thurston County
- Coordinate budget development for several Thurston County water related programs involving multiple county departments using a variety of local and state funding sources
- Developed and managed budgets totaling over a million dollars during the past five years for water programs in Thurston County
- Lead staff for over a million dollars of grant awards
- Ten years private sector experience managing budget for farming business

Intergovernmental Experience:

- **Local Government:** Extensive experience working with local governments in western Washington. This work has involved negotiating memorandum of agreements and collaborative problem solving of environmental issues.
- **State Government:** Served on a variety of state advisory committees involving numerous state agencies including the departments of: Ecology, Fish and Wildlife, Natural Resources, Community, Trade and Economic Development, Puget Sound Water Quality Action Team and the Department of Health. Obtained state agency funding for a variety of county projects and received state approval for numerous plans and permits.
- **Federal Government:** Worked with several federal agencies on a variety of local environmental issues including the Environmental Protection Agency, Army Corps of Engineers, Natural Resource Conservation Service, the Fish and Wildlife Service.
- **Tribal Governments:** Have developed collaborative working relationships with the Squaxin Island Tribe, Nisqually Indian Tribe and the Confederated Tribes of the Chehalis River. Gained support from local tribes for major county sewer and water projects and numerous

environmental policies.

- **State Associations:** Washington State Association of Counties representative on statewide committees

EDUCATION

Bachelor of Arts, The Evergreen State College, 1977

Area of emphasis in History, Political Science and Economics

PROFESSIONAL TRAINING

Citizen Participation Training. Institute for Participatory Management and Planning

Convening, Managing and Facilitating Committees. The Mediation Institute

Effective Supervisory Practices. Thurston County Employee and Administrative Services

REFERENCES

The Honorable Diane Oberquell, Chair of the Thurston County Board of County Commissioners

Don Krupp, Chief Administrative Officer, Thurston County

The Honorable Les Eldridge, Growth Management Hearings Board

Jackie Reid, Chair of the Thurston Conservation