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POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,	)	
	)	No. 01-160
Appellant,	)	
	)	DECLARATION OF PETER J. EGLICK
and	)	IN SUPPORT OF OPPOSITION BY ACC
	)	AND CASE TO DEPARTMENT OF
CITIZENS AGAINST SEATAC	)	ECOLOGY'S MOTION IN LIMINE RE
EXPANSION,	)	WAC 371-08-475(7)
	)	
Intervenor,	)	
v.	)	
	)	
DEPARTMENT OF ECOLOGY; and	)	
THE PORT OF SEATTLE,	)	
	)	
Respondents.	)	
	)	

Peter J. Eglick declares as follows:

1. I am one of the attorneys for the Airport Communities Coalition. I make this declaration based on personal knowledge and am competent to do so.

2. Attached to this declaration are true and correct copies of the following documents:

Exhibit A: Deposition transcript of Thomas Fitzsimmons taken January 18, 2002, pp. 10-13, 50-53, and 58-61

**ORIGINAL**

HELSELL FETTERMAN LLP  
1500 Puget Sound Plaza  
1325 Fourth Avenue  
Seattle, WA 98101-2509

Rachael Paschal Osborn  
Attorney at Law  
2421 West Mission Avenue  
Spokane, WA 99201

DECLARATION OF PETER J. EGLICK IN  
OPPOSITION TO ECOLOGY'S MOTION IN  
LIMINE RE WAC 371-08-475(7) - 1

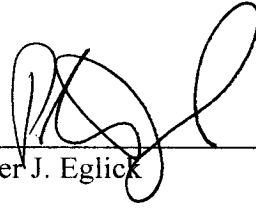
**AR 003136**

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Exhibit B: Deposition transcript of Ray Hellwig taken January 8, 2002, pp. 10-13

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

DATED this 7 day of March, 2002, at Seattle, Washington.



\_\_\_\_\_  
Peter J. Eglick

g:\lu\acc\pchb\eglick-decl-resp-limine

DECLARATION OF PETER J. EGLICK IN  
OPPOSITION TO ECOLOGY'S MOTION IN  
LIMINE RE WAC 371-08-475(7) - 2

HELSELL FETTERMAN LLP  
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**AR 003137**



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POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION, )  
Appellant, )  
vs. ) PCHB No. 01-160  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY; and )  
THE PORT OF SEATTLE, )  
Respondents. )

DEPOSITION UPON ORAL EXAMINATION  
OF  
THOMAS FITZSIMMONS  
  
10:04 A.M.  
JANUARY 18, 2002  
2425 BRISTOL COURT SW  
SECOND FLOOR  
OLYMPIA, WASHINGTON

CARLA R. WALLAT, CRR, RPR, CCR #WALLACR346BE

1 okay? I'm not trying to be resistant in answering the  
 2 question. You're asking me did I talk to Jay Manning?  
 3 Q. About the Port of Seattle Third Runway  
 4 Project.  
 5 A. I said on several occasions; in group  
 6 settings, in problem solving issues. So again the  
 7 inference here is that -- I'm having a hard time  
 8 understanding. Do you mean a one-on-one conversation?  
 9 Do you mean -- what does talk to Jay Manning mean?  
 10 Q. Well, either one, in fact, but let's break it  
 11 down if that's easier for you. Have you had any  
 12 conversations with Jay Manning about the Port of  
 13 Seattle Third Runway Project in which there were no  
 14 other participants?  
 15 A. I don't recall one. No, I don't.  
 16 Q. Have you had any conversations with Jay  
 17 Manning about the Port of Seattle Third Runway Project  
 18 in which there was only one other participant other  
 19 than you and Mr. Manning?  
 20 A. Yes, to the best of my recollection, I  
 21 believe one or maybe others, but I do recall one.  
 22 Q. Now, did that conversation occur before or  
 23 after Mr. Manning left the state's employ?  
 24 A. The conversation I'm recollecting occurred  
 25 afterwards.

1 Q. Okay. Have you had any conversations with  
 2 Mr. Manning with a group, individually, one  
 3 participant, 100 participants, doesn't matter, have you  
 4 had any conversations with Mr. Manning about the Port  
 5 of Seattle Third Runway Project while he was in the  
 6 state's employ? Do you know what I mean by "in the  
 7 state's employ" by the way?  
 8 A. Of course I do.  
 9 Q. I'm referring to the fact he was the  
 10 assistant attorney general responsible for the Ecology  
 11 division, wasn't he?  
 12 A. Yes.  
 13 Q. Then go ahead, if you would, please, and  
 14 answer the question.  
 15 A. I can't answer the question with the kind of  
 16 specificity I would like to. And please understand,  
 17 I've been in this position five years. On a weekly  
 18 basis I interact with attorney generals on numerous  
 19 occasions, certainly on every Tuesday and Friday when  
 20 we have meetings on issues and on legal cases, et  
 21 cetera. So what you're asking me to do is think back  
 22 five years ago and recall in my own mind without any  
 23 opportunity to refresh my memory here if Jay was -- if  
 24 we were dealing with the third runway during those  
 25 meetings and if Jay was the representative during those

1 meetings. And I just am uncertain. He may have been.  
 2 That is a possibility.  
 3 Q. When did you first become aware that Jay  
 4 Manning was representing the Port of Seattle concerning  
 5 the third runway?  
 6 A. I think about a year and a half ago.  
 7 Q. And when you became aware of that, did you  
 8 perform an investigation to determine whether or not he  
 9 had participated in any meetings with you, for example,  
 10 concerning the Port of Seattle Third Runway?  
 11 A. No, I did not.  
 12 Q. Did you ask anyone else to?  
 13 A. No, I did not.  
 14 Q. Were you surprised in any way to see that the  
 15 former head of Ecology's attorney general division was  
 16 now in front of you representing a party that had been  
 17 before the Department for several years?  
 18 A. No, I was not.  
 19 Q. You thought that was routine?  
 20 A. I thought it -- for it to occur, I trusted  
 21 that Mr. Manning, our attorneys, the attorney general's  
 22 office and the ethics involved in practicing law would  
 23 have all been considered and that it would have been  
 24 perfectly appropriate for Jay to take on the  
 25 responsibility that he did. And I made those

1 assumptions based on several other experiences in my  
 2 career where the same kinds of shifts have occurred and  
 3 the same sorts of ethics have presented, if there was a  
 4 conflict to be a conflict.  
 5 Q. You say you made some assumptions; is that  
 6 correct?  
 7 A. Yes, I used that term.  
 8 Q. Did you make any investigation to determine  
 9 whether those assumptions were in fact warranted?  
 10 A. I answered that. No, I did not.  
 11 Q. Okay. It's true, isn't it, that the Port of  
 12 Seattle has been seeking approval from Ecology for its  
 13 Third Runway Project for a period of time that extends  
 14 back into Mr. Manning's tenure as head of the Ecology  
 15 division of the attorney general's office, isn't it?  
 16 A. Not to nitpick, but just to sort of, in the  
 17 beginning of our conversation here, let you know that  
 18 I'm, if you haven't already experienced, wanting to  
 19 understand your question here, not to resist and not to  
 20 answer it, but I'm not willing to answer questions that  
 21 have triple or quadruple meaning, okay? So let's just  
 22 sort of walk our way through so I understand the  
 23 question.  
 24 It is true that the Department of Ecology has  
 25 been reviewing a permit by the Port of Seattle for the

1 Q. Were the subjects that he described that you  
2 read into the record subjects that were addressed in  
3 the meeting?

4 A. Yes, they were.

5 Q. Okay. So you've told us about lots of things  
6 that went on in addition to your recollection, but  
7 let's focus for a minute on what was said within the  
8 area that Mr. Hellwig described. What facts did you  
9 and he talk about relating to preparing for his  
10 deposition?

11 A. My recollection -- the best of my  
12 recollection is that we talked about sequencing issues,  
13 when -- he wanted to recall, and it was helpful to me  
14 as well, to know when we met or when we talked about  
15 something or when -- timings of meetings and so forth.  
16 So we talked about timing as one topic.

17 Q. Timing of what?

18 A. Well, just timing of events, the sequence of  
19 events, when they occurred. We talked about his -- he  
20 shared with me his understanding of, and his reasoning  
21 of the decisions around the requirement, whether or not  
22 the stormwater mitigation plan required a water right,  
23 because that was an area that was in -- that evolved  
24 over time.

25 He assured me again that he was very sorry

1 Mr. Hellwig that he requested, did Tom Luster get  
2 mentioned?

3 A. Yes. Ray shared with me his knowledge of the  
4 fact that Tom Luster is a, apparently a witness for the  
5 plaintiff's case and he shared with me his frustration.  
6 Again, I'm just sharing with you the conversation and  
7 the topic of the meeting, how, to his knowledge in the  
8 case, Tom Luster's -- Ray's opinion of how Tom Luster's  
9 so-called expert testimony is just mischaracterized  
10 from his perspective.

11 Q. And you said "so-called expert testimony."  
12 Are you saying that you don't consider Tom Luster an  
13 expert with regard to 401 Certifications? We're  
14 referring to Tom Luster who worked for the Department  
15 of Ecology for over a decade; isn't that right?

16 A. Yes, we are.

17 Q. And who was the Department's senior 401  
18 coordinator, isn't that right?

19 A. Yes.

20 Q. So when you used the term "so-called expert  
21 testimony" --

22 A. I was referring to the characterization that  
23 Ray put on it.

24 Q. Let me ask you what your characterization is  
25 then, now that we've kind of gotten that clarified.

1 that the attorney-client privilege document that he  
2 made a note in got out publicly and assured me that the  
3 opponents in this case were absolutely twisting the  
4 truth of that document and the truth of the event, and  
5 that he expressed quite a bit of frustration over that,  
6 how his integrity and meeting notes were being  
7 manipulated. That was a topic that we talked about.

8 Q. In preparation for his deposition?

9 A. It was a topic of the meeting. I don't know  
10 whether you could -- if you wish to characterize it as  
11 preparation. I wouldn't characterize it as that. I  
12 would talk about -- you know, the whole general topic,  
13 as I said, was we talked about other things than just  
14 his deposition, and that was one of the topics that  
15 came up.

16 Q. Have you talked to him since his deposition  
17 was taken?

18 A. No, I don't believe I have. I -- well, I  
19 take that back. I talked to him as recently as  
20 yesterday -- when was his deposition taken?

21 Q. January 8th.

22 A. Yes, I have. On several occasions --

23 Q. Anything come up about this case?

24 A. No.

25 Q. Now, when you had the meeting with

1 Would you call Tom Luster an expert on 401  
2 Certifications?

3 A. I would say that Tom's expert -- I mean, Tom  
4 Luster, I would characterize it as that he has some  
5 expertise related to Clean Water Act Certifications. I  
6 would not characterize him in any stretch of the  
7 imagination as having all the expertise needed to make  
8 a 401 decision.

9 Q. Well, he was the Department's expert on 401  
10 Certification, wasn't he?

11 A. I wouldn't call him that, no. He was the  
12 Department's coordinator on the 401 decisionmaking  
13 process. Big difference. Significantly big  
14 difference.

15 Q. He was the Department's senior 401  
16 coordinator; is that correct?

17 A. That's correct.

18 Q. And he held the trainings for others in how  
19 to make 401 decisions; is that correct?

20 A. He coordinated training related to the 401  
21 decisionmaking process. He did not, to the best of my  
22 knowledge, conduct training on the substantive and  
23 technical decisions because there are far many more  
24 people in the agency who we rely on to make those  
25 technical decisions within their expertise that Tom

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1 mean, I don't recall exactly what his degree is in, but  
 2 I, at one point a number of years ago, got very  
 3 familiar with Ray and his background and his expertise  
 4 and hired him based on that background and knowledge.  
 5 Q. Now, back to this meeting with Mr. Hellwig,  
 6 did you talk about -- you talked about date sequencing  
 7 I think you said; is that right?  
 8 A. Yes, I think so. Yeah, event sequencing.  
 9 Q. Event sequencing. So did any discussion at  
 10 that meeting have to do with the sequence of events  
 11 surrounding Tom Luster's removal from the 401  
 12 Certification application by the Port of Seattle?  
 13 A. It's not possible to have had that discussion  
 14 as you characterize it because Tom Luster was not  
 15 "removed," as you've characterized it.  
 16 Q. So your testimony is that Tom Luster was not  
 17 removed from the 401 Certification application for the  
 18 Port of Seattle?  
 19 A. That is my testimony.  
 20 Q. Would you prefer "transferred" as the verb in  
 21 that question?  
 22 A. That is more akin to the fact that at one day  
 23 he was working on the project and whatever time went on  
 24 he moved on to other work. And the reason it's more  
 25 characteristic of it is because it is a neutral term

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1 and relative to what happened to him, and his  
 2 reassignment of duties was a neutral activity related  
 3 to the 401 and the Port project, et cetera.  
 4 Q. Was he reassigned?  
 5 A. Are you asking a yes or no question to the  
 6 term "reassigned"?  
 7 Q. Yes.  
 8 A. No. I would say no, he was not "reassigned."  
 9 Q. So if there are Department documents not  
 10 generated by Mr. Luster but by others in the Department  
 11 that used the term "reassigned," then you're taking  
 12 issue with the use of that term?  
 13 A. Your use of the term -- perhaps I need some  
 14 explanation of your use of the term.  
 15 Q. Why don't you tell me what you think  
 16 "reassigned" means.  
 17 A. It denotes to me that with some purpose of  
 18 intent, he was taken off of one activity and reassigned  
 19 to another activity. His assignments changed and in  
 20 the context of anticipated changing assignments, so if  
 21 that's what is meant by the term, he took on new  
 22 assignments, he was assigned or -- from one to another  
 23 set of activities.  
 24 Q. And the set of activities that he was  
 25 assigned from was the Port of Seattle 401 application;

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1 is that correct?  
 2 A. From -- yes, that's correct.  
 3 Q. Now, back to what my original question was  
 4 before we had to clarify whether he was removed,  
 5 transferred, reassigned or just assigned from one thing  
 6 to another, and that question was, was that topic, in  
 7 any form, using any of those verbs, discussed in your  
 8 meeting with Mr. Hellwig?  
 9 A. Yes, it was.  
 10 Q. And why would Ray Hellwig discuss that with  
 11 you?  
 12 A. Well, I think it's a very logical issue  
 13 because during the permitting process, I had had  
 14 several contacts by legislators, I had had a contact by  
 15 Tom Luster himself via a phone mail -- voice mail  
 16 rather -- about his assignments and his duties, and so  
 17 I had personal involvement in the series of events over  
 18 the course of time that related to Tom Luster.  
 19 Q. Related to Tom Luster in general or related  
 20 to Tom Luster's ultimate assignment from, as you put  
 21 it, the SeaTac third runway application to, as you put  
 22 it, other duties?  
 23 A. I'm sorry, I got lost in the question. I was  
 24 paying more attention to how much fun you were having  
 25 asking it, to tell you the truth, by the smirk on your

Page 61

1 face. I really don't know the question, Peter. Would  
 2 you ask it again?  
 3 Q. I'm not aware that I'm smirking, I'm actually  
 4 kind of sitting here trying to suppress a cough which I  
 5 have --  
 6 MR. EGLICK: But go ahead, court reporter, if  
 7 you would, please, read back the question.  
 8 (Reporter read back as requested.)  
 9 A. I'd say related to Tom -- my answer is  
 10 related to Tom Luster in general.  
 11 Q. (BY MR. EGLICK) Now, what did you discuss  
 12 about Tom Luster in general with Mr. Hellwig?  
 13 A. I recall him telling me where Tom Luster now  
 14 is employed. I recall him talking about the status of  
 15 his knowledge of Tom Luster as, as we had talked about  
 16 in this deposition previously, an expert witness for  
 17 the plaintiffs. I recall Ray making remarks that, The  
 18 plaintiffs are trying to make this out to sound like we  
 19 removed Tom Luster from his job.  
 20 I, of course, was familiar with those charges  
 21 because legislators had made them and others had made  
 22 them, and I said -- you know, This is not true. They  
 23 can say what they want to, they can spin it out to be  
 24 what they want to, but it's just not true that Tom --  
 25 and so we talked about those issues.

**EXHIBIT**

**AR 003143**



POLLUTION CONTROL HEARINGS BOARD

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AIRPORT COMMUNITIES COALITION, )

Plaintiff, )

vs. ) NO. 01-160

DEPARTMENT OF ECOLOGY and THE )  
PORT OF SEATTLE, )

Defendants. )

DEPOSITION UPON ORAL EXAMINATION  
OF

RAY HELLWIG

10:00 A.M.

JANUARY 8, 2002

1325 FOURTH AVENUE, SUITE 1500  
SEATTLE, WASHINGTON

MARY L. GREEN, CCR, RPR

CSR NO. GREENML497RZ

AR 003144

25

1 this deposition?

2 A. Well, I've had conversations in passing with  
3 others who were also going to be deposed, but I  
4 wouldn't characterize those conversations as deposition  
5 preparation, but there have been other conversations  
6 about the depositions with ecology employees, and I've  
7 had conversations with my attorney.

8 Q. Which ecology employees have you had  
9 conversations with about the deposition?

10 A. Well, I've had conversations with several  
11 employees regarding the fact that we were going to be  
12 deposed, but not in a manner to necessarily prepare for  
13 the depositions. But individuals that I've talked to  
14 about the depositions include Ann Kenny. I traded  
15 voice messages with Gordon White, had a brief  
16 conversation with Tom Fitzsimmons.

17 Let me think. Dan Swenson, maybe one or two  
18 words with him, perhaps just a very few words with  
19 Kevin Fitzpatrick, and of course my assistant, Nancy  
20 Groves, who helps me manage my schedule. There could  
21 be others, but they're not coming to mind right now.

22 Q. What did you talk with Tom Fitzsimmons about?

23 A. I reviewed with him some of the key areas of  
24 concern that we've dealt with over the last many months  
25 for purposes of -- I think in part just trying to

1 I'm not recalling specifically.

2 Q. What do you mean by assignments made?

3 A. The ecology staff person assigned  
4 responsibility for coordinating with program experts  
5 for purposes of pulling information together and  
6 writing a recommendation with respect to reasonable  
7 assurance and a 401 water quality certification.

8 Q. Tom Luster was removed from the assignment on  
9 the 401 for the Sea-Tac project, was he not, in October  
10 2000?

11 A. I think that was the time frame.

12 Q. What was the reason that you talked with Tom  
13 Fitzsimmons about it? Was this in the last few weeks  
14 you talked to Tom Fitzsimmons?

15 A. It would have been the last few weeks.

16 Q. So in the last few weeks, you're testifying  
17 that you talked with Tom Fitzsimmons, and you're saying  
18 that reassignment of Tom Luster may have come up in the  
19 conversation; is that correct?

20 A. Yes.

21 Q. Now, what does the reassignment of Tom Luster  
22 have to do with your conversation with Tom Fitzsimmons?

23 A. Well, as I mentioned, the conversation was  
24 brief. It was an overview of key areas of concern and  
25 issues that relate to the runway decision, and one of

1 recall events and to get my own memory clear on a few  
2 key issues.

3 Q. Did any of those events include contacts with  
4 the Port of Seattle?

5 A. The events that we discussed?

6 Q. Yes.

7 A. Not that I recall.

8 Q. What about contacts with the governor's  
9 office?

10 A. There may have been reference to meetings  
11 that we'd had at the governor's office. This was a  
12 fairly brief conversation, sort of an overview.

13 Q. Was there any reference to Tom Luster?

14 A. I don't think so.

15 Q. Have you talked to anyone affiliated with the  
16 port about anything concerning your deposition?

17 A. I'm thinking about the previous question  
18 about Tom Luster, and I'm thinking about the  
19 conversation, the brief conversation I had with Tom.  
20 It's possible --

21 Q. You mean Tom Fitzsimmons?

22 A. Tom Fitzsimmons. It's possible -- I don't  
23 recall specifically -- that we had discussions about  
24 assignments made for the 401 coordination function, and  
25 Tom Luster's name may have come up in that context, but

1 the issues that could come up in a discussion about  
2 that decision would be the roles and responsibilities  
3 of different ecology staff, and there was a change made  
4 as you just mentioned in responsibility for the 401  
5 coordination function.

6 Q. Did you talk with Mr. Fitzsimmons about the  
7 reasons that that change was made in October 2000?

8 A. We may have.

9 Q. You may have?

10 A. I don't recall specifically.

11 Q. How long ago was this conversation with  
12 Mr. Fitzsimmons?

13 A. A few weeks ago.

14 Q. How often do you speak with the director of  
15 -- Mr. Fitzsimmons is director of the Department of  
16 Ecology, isn't he?

17 A. That's correct.

18 Q. How often do you speak to him?

19 A. Fairly routinely.

20 Q. Fairly routinely is how often?

21 A. Not every day. It depends on what is  
22 happening in the region, what issues are at hand.

23 Q. Let me ask you this. Today is January 8.

24 When was the last time you talked to Mr. Fitzsimmons?

25 A. He was involved in a conference call, a