

RECEIVED
JAN 22 2002
ENVIRONMENTAL
HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,)	
	)	No. 01-160
Appellant,)	
	)	SECOND DECLARATION OF
CITIZENS AGAINST SEA-TAC	)	MICHAEL P. WITEK IN SUPPORT OF
EXPANSION,	)	ACC'S MOTION FOR SUMMARY
	)	JUDGMENT
Intervenor/Appellant,)	
	)	(Section 401 Certification No.
v.	)	1996-4-02325 and CZMA concurrency
	)	statement, issued August 10, 2001,
STATE OF WASHINGTON,	)	Related to Construction of a Third
DEPARTMENT OF ECOLOGY; and	)	Runway and related projects at Seattle
THE PORT OF SEATTLE,	)	Tacoma International Airport)
)	
Respondents.)	
_____)	

Michael P. Witek 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: Page 1 and Section I, pages 22-25 of the Section 401 Water Quality Certification #1996-4-02325, issued by the State of Washington, Department of Ecology on September 21, 2001.
 - Exhibit B: Pages 1, 260, 261 and 262 of the Deposition of Ray Hellwig January 8, 2002.

SECOND DECLARATION OF MICHAEL P.
WITEK IN SUPPORT OF ACC'S MOTION
FOR SUMMARY JUDGMENT - 1

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

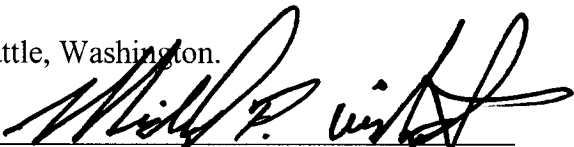
ORIGINAL

AR 004708

- Exhibit C: Application for Change/Transfer of Water Right, Submitted by the Port of Seattle to the State of Washington Department of Ecology on June 22, 2000.
- Exhibit D: Page 3.3-14 of the Wallula Power Project EFSEC Application, October 2001.
- Exhibit E: Pages 1 and 15 of the Declaration of Ann Kenny, Dated October 1, 2001.
- Exhibit F: Pages 1, 30 and 31 of the Deposition of Edward O'Brien, December 21, 2001.
- Exhibit G: Cover letter and Page 1 of King County Department of Natural Resources "Review Comments on the Low Flow Impact Analysis – Flow Impact Offset Facility Proposal, July 2001.

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

DATED this 22nd day of January, 2002, at Seattle, Washington.


Michael P. Witek

g:\lu\acc\pchb\witek-decl-msj.doc

SECOND DECLARATION OF MICHAEL P.
WITEK IN SUPPORT OF ACC'S MOTION
FOR SUMMARY JUDGMENT - 2

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

AR 004709

**IN THE MATTER OF GRANTING A
WATER QUALITY CERTIFICATION
TO:**

the Port of Seattle, in accordance with 33
U.S.C. 1341 FWPCA § 401, RCW
90.48.260
and WAC 173-201A.

ORDER #1996-4-02325 (Amended -1)
Construction of a Third Runway and related
projects. Components of the project include
construction of a 8,500-foot-long third parallel
runway with associated taxiway and navigational
aids, establishment of standard runway safety areas
for existing runways, relocating S. 154th Street
north of the extended runway safety areas and the
new third runway, development of the South
Aviation Support Area and the use of on-site
borrow sources for the third runway embankment.

TO: Port of Seattle
Seattle-Tacoma International Airport
Attn: Elizabeth Leavitt
17900 International Blvd., Suite 402
SeaTac, WA 98188-4236

The Port of Seattle (Port) requested a water quality certification from the state of Washington for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). The request for certification was made available for public review and comment through the U.S. Army Corps of Engineer's Second Revised Public Notice No. 1996-4-02325 dated December 27, 2000, as amended by the Corps' Amendment and Erratum to the Second Revised Public Notice dated January 17, 2001. Ecology issued a 401 certification for this project on August 10, 2001. Ecology has decided to amend that certification. Accordingly, Ecology hereby rescinds Order Number 1996-4-02325 and replaces it in its entirety with Order Number 1996-4-02325 (Amended-1).

The Third Runway site and related Master Plan Update projects and on-site mitigation are located in Sections 4, 5, and 9, Township 22N, Range 4E and Sections 20, 21, 28, 29, 32, 33, Township 23 N, Range 4E in King County. Offsite mitigation will be located in Section 31, Township 22N, Range 5E in King County. The project areas, on-site mitigation and the proposed offsite mitigation are located within Water Resource Inventory Area 9. The projects covered by this Order are described in detail in the December 27, 2000 Public Notice issued by the U.S. Army Corps of Engineers, the October 25, 2000 Joint Aquatic Resource Permit Application (JARPA) and in the plans approved by Ecology as a part of this Order.

For purposes of this Order, the term "Port" shall mean Port of Seattle and its agents or contractors.

Work authorized by this Order is limited to the work described in the October 25, 2000, JARPA, as amended, unless modified by this Order or by conditions contained in other permits sought for the Master Plan Update Improvement projects.

AUTHORITIES:

AR 004711

the monitoring wells on Port property. Depth of excavation and maximum seasonal ground water elevations shall be submitted annually to Ecology's Federal Permit Manager, SeaTac Third Runway.

I. Conditions for Mitigation of Low Flow Impacts:

1. Ecology has reviewed and approved the December 2000 Low Streamflow Analysis and the Summer Low Flow Impact Offset Facility Proposal dated July 23, 2001. In order to ensure clarity, within 45 days of receipt of this Order the Port shall submit a revised plan integrating the Low Streamflow Analysis and Summer Low Flow Impact Offset Facility Proposal into a single document that addresses the following issues:
 - a) **General:**
 - i) The revised plan shall be stamped by a licensed professional civil engineer.
 - ii) All supporting documents shall be clearly labeled and included in a technical appendix and/or on one clearly labeled CDROM. Only those files which directly correspond to results presented in the report should be included.
 - iii) The plan shall include a specific section discussing the accuracy of the calibration in predicting low flows at upper stream gauges, and a statement of adequacy of the calibrations for the purpose of low flow simulation.
 - iv) Revised conceptual drawings for reserve storage vaults shall be submitted that include any changes required by this Order and that include details on how constant discharge will be maintained in reservoirs with variable hydraulic head pressures. Reserve vault inlets and outlets shall be configured so that water is added/discharged from the middle of the reserve storage depth in order to avoid disturbing sediments and/or floatables that could be present in the reserve vault. In order to ensure that reserve water is well aerated, reserve storage vaults shall include open ventilation consistent with King County Surface Water Design Manual wetvaults. Mechanical aeration shall be provided if grating is not feasible. Conceptual drawings shall include detail on reserve water outfalls. Where feasible, outfalls shall discharge directly to wetlands that are adjacent (in hydrologic continuity) to streams rather than directly to streams.
 - v) A final Operations and Maintenance Plan shall be included in the revised plan. The Operations and Maintenance plan section of the report shall require the release of any water remaining in the reserve vaults during the month of November or until substantial rains occur. The Operations and Maintenance Plan shall address management of accumulated sediments in reserve storage vaults. All accumulated sediments shall be disposed of in

- an appropriate upland disposal site.
- vi) The revised plan shall include a monitoring protocol to determine whether placement of the Third Runway embankment fill and other fill used for Master Plan Update Improvements meets fill specifications for type of material, meets specifications for compaction rates, and meets assumption for infiltration rates.
 - vii) The revised plan shall include contingency measures to offset reduced recharge in the event the Third Runway embankment fill and other fill used for Master Plan Update Improvements does not meet performance standards for infiltration rates.
 - viii) The revised plan shall include information demonstrating that low flow mitigation (vault releases) can be conveyed to streams without being lost to soil.
 - ix) The Port shall develop a pilot program to test one reserve stormwater vault for performance. The Port shall include a proposal for a pilot in the revised plan. The pilot shall be completed within three years after receipt of the Section 404 permit from the U.S. Army Corps of Engineers.
 - x) The revised plan shall identify and analyze all direct or indirect impacts to wetlands as a result of low flow impacts and the proposed low flow mitigation. The revised plan shall contain contingencies to mitigate for impacts to wetlands if wetland impacts are identified as a result of monitoring.

b) Des Moines Creek-

- i) The revised plan shall provide data comparing the existing simulation of low flows against the Tyee Golf Course weir gauge data. The Port shall provide representative hydrographs, associated discussion and statement of adequacy of the calibration for simulating low flows.
- ii) SDS3 vault design (sheet C141) indicates that not all inlet pipes are tributary to the reserve storage vault. The revised plan shall factor into the vault filling calculations the effects of having a reduced tributary area.
- iii) SDS4 vault design (sheet 139) shall be reconfigured to show the vault inlet pipe at a lower elevation. A note similar to the one found on exhibit C131 should be included here. The Port shall evaluate the feasibility of providing reserve storage only in the SDS3 vault.

c) Walker Creek-

- i) In place of the Port's proposal to line 3.5 acres of filter strip within the SDW2 subbasin, the Port's revised plan shall provide that low flow mitigation water for Walker Creek will be obtained from the collection of winter runoff from the 69 acres of impervious surface being added in the

Walker Creek non-contiguous groundwater basin. Reserve stormwater collected from this area may be stored in either the proposed 15-acre foot vault in Walker Creek or in the SDS3 vault. If, within thirty (30) days of receiving this order, the Port submits to Ecology information demonstrating that another feasible and implementable alternative exists, Ecology will review the alternative and consider amending this Order to allow implementation of the alternative.

- ii) The current proposal for Walker Creek assumes no contribution from the Third Runway embankment fill. If the revised plan includes a reinstatement of the Third Runway embankment model, the area of the fill embankment tributary to Walker Creek shall be verified and modeled accordingly.

d) Miller Creek-

- i) The revised plan shall verify whether the 1991 impact number is 0.11cfs or 0.12cfs. Unless shown otherwise, Ecology shall presume that 0.12cfs is the correct number.
- ii) The revised plan shall include the correct "Low Flow Miller 91-94.xls" file and back-up data that produce a future 1991 7-day low flow of 0.67cfs shall be included on CDROM.
- iii) The revised plan shall include documentation that clarifies whether the existing (1994) condition 1991 low flow is 0.784cfs as was used in electronic files or 0.79cfs as was presented in the July 23, 2001 memorandum.
- iv) The revised plan shall correct the impervious acreage figures provided for the new North Employees Parking Lot (NEPL) vault to reflect 26.29 acres of impervious (Miller 2006 HSPF model), rather than 32.31 acres.
- v) The Port shall evaluate orifice sizing and determine whether a change in orifice size and/or a reduction in the number of reserve stormwater vaults is warranted. The revised plan shall evaluate vault locations for feasibility and special design considerations (e.g., upstream spill control, oil controls, downstream compost filters, etc.) to ensure that reserve stormwater from the NEPL and cargo vaults will receive adequate treatment to ensure water quality.
- vi) The revised plan shall include BMPs developed to ensure infiltration into the Third Runway embankment rather than into the Third Runway embankment conveyance system.
- vii) The revised plan shall include revised Grading and Drainage sheets 129 and 130. The revised sheets shall clarify the flow in the collection swales.
- viii) Revised conceptual drawings, and supporting analysis, shall be submitted with the revised plan that address water quality concerns for the NEPL and Cargo reserve storage areas.

- e) **Monitoring and Reporting Requirements:** The revised plan shall develop a comprehensive monitoring protocol that, at a minimum, addresses the following elements:
- i) Collection of stream gage data and an evaluation/correlation to expected flow rates established by the model.
 - ii) Water quality sampling and reporting. Water quality shall be tested at vault outflow and instream at a point 100 feet downstream of the outflow.
 - iii) Metering of water from vaults.
 - iv) Infiltration rate sampling and monitoring to evaluate performance of the fill.
 - v) Contingency if water quality in vaults does not meet water quality criteria (e.g., additional treatment, other source, flocculation, coalescing oil water separator, etc.).
 - vi) Instream biologic monitoring shall occur in Des Moines, Miller and Walker Creeks to assess the impacts of the Port's low flow offset proposal. The Port shall develop an instream monitoring protocol that shall at a minimum include the following elements:
 - Existing low-flow conditions of Des Moines, Miller and Walker Creek will be evaluated by conducting Benthic Index of Biotic Integrity (BIBI) monitoring (Karr and Chu 1999). Monitoring shall occur four times per year and shall continue through year five (5) after construction and then yearly until completion of the fifteen (15)-year monitoring period. In addition to the BIBI monitoring required above, the Port shall develop a that monitors at a minimum temperature, turbidity, channel morphology, substrate quality, type and amount of large woody debris and other habitat features, riparian habitat cover and fish use. Representative stream channel cross-sections shall be utilized. Information must be synthesized to determine how these elements may be impacting overall stream health.
 - Mitigation during the proposed period appears to effect low flow frequencies during June and July. Monitoring shall specifically address potential adverse impacts to fish or aquatic biota during June and July. If monitoring shows an adverse effect during this time period the Port shall implement contingencies to address the impact (such as providing additional mitigation water during June and July).

J. Operational Stormwater Requirements:

1. **Approved Stormwater Plan:** The Comprehensive Stormwater Management Plan (CSMP), Volumes 1 through 4, December 2000 as revised by the July 2001 Replacement pages is the approved stormwater management plan for this project. It shall be implemented in its entirety. No changes to the CSMP

EXHIBIT

AR 004716

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

POLLUTION CONTROL HEARINGS BOARD

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 004717

1 acceptable?

2 A. Yes.

3 Q. And the 401 was issued, was it not, in
4 September -- certification was issued in September for
5 a certification process that had a deadline of the end
6 of December 2001; is that correct?

7 A. I would need to check. I believe that's
8 correct.

9 Q. So if ecology was in need of this augmented
10 or new or whatever word you want to use low flow plan,
11 why did ecology issue a certification in September that
12 depends on a plan to be submitted later when the
13 deadline for the ecology certification decision wasn't
14 until the end of December? In other words, why not
15 just wait until you had an acceptable plan in hand to
16 review?

17 A. We had analysis telling us what the impact
18 was and requirements in the 401 that the port would in
19 its plan account for that impact, and we had the
20 conceptual plan in front of us. We had all the other
21 requirements in the 401 where we wanted them. We had
22 reasonable assurance.

23 Q. Did you have reasonable assurance in
24 September with regard to the low flow plan as the
25 record stood when the September certification was

1 A. Yes.

2 Q. Just give me a minute to check my notes, but
3 I think I may be done. Do you know who Bob Barwin is?
4 I forgot to ask you that.

5 A. Yeah. He's a supervisor for the water
6 resources program central regional office. He's also
7 -- he was on the water quality program program
8 management team when I was with the water quality
9 program in the early '90s, and I know him fairly well.

10 Q. Because I'm looking at ecology's answers to
11 discovery, which we just received yesterday, and he was
12 the only name on there I didn't really recognize. It's
13 referring to a March 22, 2001, telephone call
14 discussing the port's proposal with regard to use of
15 water right or the need for water right for
16 implementation of flow mitigation, so why would Bob
17 Barwin be on a call like that?

18 A. Given his experience with the water resources
19 program, it was agreed -- I'm not sure who agreed to
20 it, but I was happy to have him on the call -- that
21 given his experience with the programs, it would be
22 helpful to have him consult with us on the water right
23 issue.

24 There was, for example, a situation in
25 eastern Washington where stormwater had been detained

1 issued?

2 A. Yes.

3 Q. So whatever the port submits now, then, does
4 not matter?

5 A. No. It matters. It still has to satisfy our
6 ongoing requirements.

7 Q. Is there anything in the conditions that have
8 been imposed with regard to the low flow plan --

9 A. I'm sorry. I'm looking at that section of
10 the low flow plan now. Would you please repeat the
11 question?

12 Q. Do you need to have a minute to look at it
13 without me asking you a question?

14 A. No. Go ahead, and if I need to look, I'll
15 look.

16 Q. Is there anything in the September 401
17 certification with regard to the low flow plan that you
18 could do without, you being ecology?

19 A. I'm not aware of any element or piece off the
20 top of my head.

21 Q. So the deliverables, I guess isn't that one
22 term that's used in this context?

23 A. Yes.

24 Q. So the deliverables called for in the
25 September 401 are all in your understanding essential?

1 and used in an industrial facility as a cleaning tower,
2 and that was beneficial use that triggered a
3 requirement for water right, and I believe that's one
4 of the examples that folks from the east side of the
5 mountains -- I don't know if it was Bob or not --
6 wanted to make sure it was considered. Of course, it
7 was sort of an apples and oranges situation with regard
8 to what the port is proposing.

9 Q. So Bob Barwin was describing a situation that
10 he'd encountered in the course of his work for ecology
11 east of the mountains where someone had established a
12 beneficial use without the benefit of a water right,
13 and he was drawing an analogy to the situation with
14 regard to the port proposal?

15 A. I don't believe he was drawing an analogy. I
16 think he wanted to just put it out there for
17 consideration. Actually, it might have happened in the
18 eastern regional office. It might have been a Spokane
19 office issue. But Bob would be aware of it. Bob has
20 years of experience with both water resources and water
21 quality, and I value his ideas and thinking, so I was
22 glad to have him on the call.

23 Q. And did he opine as to whether or not the
24 port should be required to obtain a water right?

25 A. Bob agreed with several other program staff

1 that the issue was in what I think some folks refer to
 2 as a gray zone under the law where it wasn't as clear
 3 as folks would prefer, but I think that he thought
 4 arguments could be made if I recall that a water right
 5 could be required.
 6 Q. But I don't want to have you testifying as to
 7 what Bob thought. I want to ask you to testify as to
 8 what Bob said, unless when you say thought you meant
 9 said.
 10 A. I think I did. Bob said as I recall -- this
 11 was some time ago, many months ago -- that it's a tough
 12 issue; that it's in the gray zone of the law; that we
 13 could win on that issue and we could lose on it, his
 14 opinion. It could go either way. My understanding of
 15 listening to Bob was that it was his opinion it would
 16 be appropriate to require the water right.
 17 MR. EGLICK: I don't think I have anything
 18 else at this time. You guys can go ahead and ask your
 19 questions.
 20 MS. MARCHIORO: That concludes the
 21 deposition.
 22 MR. REAVIS: Given the hour, I think we'll
 23 not do that. I don't want to waive my right to ask
 24 questions at a later date, but I don't anticipate that
 25 will be necessary.

1 CORRECTION & SIGNATURE PAGE
 2
 3 RE: ACC v. DOE; PCHB; 01-160
 4 Ray Hellwig; January 8, 2002
 5
 6 I, Ray Hellwig, have read the within transcript
 7 taken January 8, 2002, and the same is true and
 8 accurate except for any changes and/or corrections, if
 9 any, as follows:
 10 PAGE LINE CORRECTION
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22 Signed at , Washington, on the
 23 day of , 2002.
 24
 25 Ray Hellwig

1 (Deposition concluded at 6:35 p.m.)
 2 (Signature was reserved.)
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 CERTIFICATE
 2
 3 I, Mary L. Green, the undersigned Certified Court
 4 Reporter and Notary Public, do hereby certify:
 5 That the testimony and/or proceedings, a transcript
 6 of which is attached, was given before me at the time
 7 and place stated therein; that any and/or all
 8 witness(es) were by me duly sworn to tell the truth;
 9 that the sworn testimony and/or proceedings were by me
 10 stenographically recorded and transcribed under my
 11 supervision to the best of my ability; that the
 12 foregoing transcript contains a full, true, and
 13 accurate record of all the sworn testimony and/or
 14 proceedings given and occurring at the time and place
 15 stated in the transcript; that I am in no way related
 16 to any party to the matter, nor to any counsel, nor do
 17 I have any financial interest in the event of the
 18 cause.
 19 WITNESS MY HAND AND SEAL THIS 9TH DAY OF JANUARY
 20 2002.
 21
 22 MARY L. GREEN, CSR #GREENML497RZ
 23 Notary Public for the State of Washington,
 24 residing in King County.
 25 My appointment expires 4/4/05.

**E
X
H
I
B
I
T**

AR 004720



RECEIVED

JUN 16 2000

DEPT OF ECOLOGY

STATE OF WASHINGTON
APPLICATION FOR CHANGE/TRANSFER
OF WATER RIGHT

FEE PAID 10

6-16-00
TW

For filing with Ecology or with County Conservancy Boards

A MINIMUM FEE OF \$10.00 PAYABLE TO ECOLOGY MUST ACCOMPANY THIS APPLICATION

- (Check all that apply.)
- Change purpose(s) of use
 - Add purpose(s) of use
 - Change point(s) of diversion/withdrawal
 - Add point(s) of diversion/withdrawal
 - Change/transfer place of use
 - Other (i.e. consolidation, intertie, trust water)

Explain: _____

FOR OFFICE USE ONLY

CHANGE No. 2369-A WRIA 9

DATE ACCEPTED 7.13.2000 BY JS

FEE \$ 10.00 REC'D 1 1

CHECK No. ✓

SEPA: Exempt Not exempt

****IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS (PLEASE PRINT OR TYPE CLEARLY)****

1. Applicant Information:

APPLICANT/BUSINESS NAME <u>Port of Seattle</u>		PHONE NO. <u>(206) 728-3000</u>	FAX NO. <u>()</u>
ADDRESS <u>PO Box 1209</u>			
CITY <u>Seattle</u>		STATE <u>WA</u>	ZIP CODE <u>98111</u>

CONTACT NAME (IF DIFFERENT FROM ABOVE) <u>Keith R. Smith</u>		PHONE NO. <u>(206) 988-5528</u>	FAX NO. <u>(206) 988-5636</u>
ADDRESS <u>17900 International Blvd. Suite 402</u>			
CITY <u>Seattle</u>		STATE <u>WA</u>	ZIP CODE <u>98188-4236</u>

2. Water Right Information:

WATER RIGHT OR CLAIM NUMBER <u>2369</u>	RECORDED NAME(S) <u>King County Water District No. 75</u>
DO YOU OWN THE RIGHT TO BE CHANGED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
IF NO, PROVIDE OWNER(S) NAME: _____	
HAS THE WATER BEEN PUT TO BENEFICIAL USE IN THE LAST FIVE (5) YEARS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

Please attach copies of any documentation that demonstrates consistent, historical use of water since the right was established. Also, if you have a water system plan or conservation plan, please include a copy with your application.

FOR OFFICE USE ONLY

APP. NO. _____ PERMIT NO. _____ CERT. NO. 2369-A CERT. OF CHANGE NO. CGI-02369-A

AR 004721

3. Point(s) of Diversion/Withdrawal:

A. Existing

SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #
Well	SW	SE	NW	4	22N	4E	none (property owned by a municipal corporation)	

B. Proposed

SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #
same as above								

DO YOU OWN THE EXISTING AND PROPOSED POINT(S) OF DIVERSION/WITHDRAWAL?
 EXISTING: YES NO PROPOSED: YES NO - IF NO, PROVIDE OWNER(S) NAME:

Please include copies of all water well reports involved with this proposal. Also, if you know the distances from the nearest section corner to the above point(s) of diversion/withdrawal, please include that information in Item No. 6 (remarks) or as an attachment.

4. Purpose of Use:

A. Existing

PURPOSE OF USE	GPM or CFS	ACRE-FT/YR	PERIOD OF USE
domestic supply / golf course irrigation	400 gpm	560	1949-2000

B. Proposed

PURPOSE OF USE	GPM or CFS	ACRE-FT/YR	PERIOD OF USE
Flow Augmentation for Des Moines Creek and domestic supply / golf course irrigation	400 gpm	560	2000 ->

5. Place of Use:

A. Existing

LEGAL DESCRIPTION OF LANDS WHERE WATER IS PRESENTLY USED:

Tyce Valley Golf Course
 2401 South 192nd St.
 Seattle WA

¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES
		4	22N	4E	King	none - property owned by a municipal corporation	96.5

DO YOU OWN ALL THE LANDS IN THE EXISTING PLACE OF USE? YES NO - IF NO, PROVIDE OWNER(S) NAME:

B. Proposed

LEGAL DESCRIPTION OF LANDS WHERE NEW USE IS PROPOSED:

Same as existing and Des Moines Creek from and including airport property on creek mouth at Puget Sound

¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES
					King		

DO YOU OWN ALL THE LANDS IN THE PROPOSED PLACE OF USE? YES NO - IF NO, PROVIDE OWNER(S) NAME:
 Part owns golf course, does not own creek. (public ownership)

AR 004722

Attach a detailed map of your proposed change/transfer. The map should show existing and proposed point(s) of diversion/withdrawal, place of use and any other features involved with this application. If platted property, please include a certified copy of the plat map.

Are there any ADDITIONAL WATER rights OR CLAIMS RELATED to the same property as the ONE PROPOSED FOR CHANGE/TRANSFER?
 YES NO - IF YES, PROVIDE THE WATER RIGHT/CLAIM NUMBER(S):
2191, 2376, 5233

6. Remarks and Other Relevant Information:

See additional materials provided with application

IF FOR SEASONAL OR TEMPORARY, START DATE ____/____/____ END DATE ____/____/____

7. Signatures:

I certify that the information above is true and accurate to the best of my knowledge. I understand that in order to process my application, I am hereby granting staff from the Department of Ecology or the County Conservancy Board access to the above site(s) for inspection and monitoring purposes. If assisted in the preparation of the above application, I understand that all responsibility for the accuracy of the information rests with me.

Michael J. Feldman (Applicant) 6/22/00 (Date)
Michael J. Feldman (Water Right Holder) 6/22/00 (Date)
Michael J. Feldman (Land Owner(s) of Existing Place of Use) 6/22/00 (Date)

IMPORTANT! APPLICATION FILING INFORMATION IS PROVIDED ON THE NEXT PAGE.

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

APPLICATION FEE NOT ENCLOSED MAP NOT INCLUDED or INCOMPLETE

ADDITIONAL SIGNATURES REQUIRED SECTION _____ IS INCOMPLETE

OTHER/EXPLANATION: _____

STAFF: _____ DATE: ____/____/____

AR 004723

**E
X
H
I
B
I
T**

AR 004724

The clay collars would be placed near the face of the bore pits to ease the installation and to minimize any potential for bentonite migration to the creek. Use of clay collars is a routine construction practice and presents insignificant risks to creek-water quality.

Permanent Stormwater Management

See Section 2.10.3 Permanent Stormwater Management for details.

Runoff/Absorption

Runoff from the project site is discussed in Section 2.10 Surface Water Runoff and Section 2.8.2.4 Site Stormwater System. Rainfall upon the 66-acre bermed project site will be captured and routed to oil/water separators, then to a detention pond where the water will be collected and directed to the power plant cooling tower basin. During a normal precipitation year, 7 inches of water will be captured over the 66-acre bermed project site. This amounts to 38.5 acre-feet per year of water (assuming no loss to evaporation) that no longer will percolate into the soil and gravel aquifer.

The policy of the Washington Department Of Ecology is for the Applicant to request a water right permit for the beneficial use of water exceeding 5,000 gallons per day. The Wallula Power Project will use more than 5,000 gallons per day and thus all water sources, including the beneficial capture and beneficial use of stormwater must be included in the project water rights request. In view of the capture and beneficial use of stormwater, the Applicant requests that a new point of withdrawal be established for the consolidated Boise Cascade Corporation fiber farm water rights. The new point of withdrawal will be the power plant location, to permit reuse of the stormwater.

Any stormwater captured for the power plant use results in a corresponding reduction in groundwater withdrawals from the gravel aquifer located under the proposed power plant and the Boise Cascade Corporation fiber farm. Therefore, capture of stormwater for beneficial re-use has no net impact upon the aquifer resources and is not included in the calculation of water use requirements described in Section 2.5 Water Supply System. The additional point of withdrawal is acceptable from a hydrogeologic standpoint because the same body of water is involved and stormwater capture will affect existing water rights the same as the existing withdrawal locations. The on-site makeup water supply well(s) will be used continuously at a constant discharge. The Boise Cascade Corporation fiber farm wells will be used at a variable rate in response to project demands. Therefore, the captured storm water will be used in lieu of extraction from the Boise Cascade Corporation fiber farm wells only.

The Applicant believes that no net regional impacts to water resources will occur as a result of capture and reuse of storm water. In addition, there are no potentially impacted shallow groundwater rights in the vicinity of the captured storm water. The potentially affected water rights in that vicinity is the instream flow of the Columbia River. Since all shallow groundwater flows to the Columbia River and both sources are similar distances from the Columbia River, no significant timing or quantity impacts are expected at the Columbia River as a result of use of captured stormwater in lieu of extraction of groundwater from the Boise Cascade Corporation fiber farm wells. Thus, the additional point of withdrawal under the Boise Cascade Corporation water right should be permissible.

AR 004725

EXHIBIT

AR 004726

RECEIVED
OCT 02 2001
9:20 AM
HELSELL FETTERMAN LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

AIRPORT COMMUNITIES
COALITION,

Appellant,

v.

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

Respondents.

PCHB No. 01-133

DECLARATION OF ANN KENNY

Ann Kenny, declares as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated herein.

2. I am an Environmental Specialist 4 employed by the Department of Ecology (Ecology) in the Northwest Regional Office (NWRO) Shorelands and Environmental Assistance Program's Permit Assistance Center. I have been employed by Ecology since 1990 and have held that position since August 1999. My duties include providing regulatory and technical assistance on large complex projects. I worked from February 1998 to July 1999 as the Northwest Regional Office's Federal Permit Coordinator reviewing projects requiring certification under § 401 of the Clean Water Act (401 Certification). Even after taking the Permit Assistance Center position, I continued to review and issue 401 Certifications. Over the

1 and an increase in impervious surface area in the Walker, Miller and Des Moines Creek basins.
2 In requiring a Low Flow Mitigation Plan, Ecology intended that the Port offset the impacts to
3 the streams by mimicking, to the extent practicable, the pre-project hydrologic curve. In order
4 to clearly identify the issues the low flow mitigation plan needed to address, Ecology and the
5 Port engaged in a facilitated process similar to that of the CSMP for low flow. In that process,
6 Ecology identified the impacts and approved a conceptual plan to mitigate for those impacts.

7 32. The primary concerns expressed by the ACC regarding low flow mitigation are
8 that the Port's Low Flow Offset Mitigation Plan lacks sufficient detail and is untested. Mr.
9 Whiting, in his review of the plan, included in his comments specific recommendations to
10 address these issues. Whiting Dec., Exhibit 2. In drafting the 401 Certification, I included Mr.
11 Whiting's recommendations as conditions. For example, Condition I(a) of the 401
12 Certification requires the Port to submit a more detailed plan that includes conceptual design
13 drawings for the stormwater vaults, a final operations and maintenance plan, a monitoring
14 protocol, and contingency measures to address potential shortages in the vaults. The 401
15 Certification also requires the Port to develop a pilot program to test one stormwater vault for
16 performance before implementing the plan. This "bench scale" testing of the system was
17 included in response to comments from the ACC. The ACC's contention that the Port has
18 already exhausted contingency measures for obtaining additional water, if needed, to offset low
19 flows in the project streams is incorrect. The Port's contingency plan could involve the
20 purchase of water, for example, for use as mitigation.

21 33. Although some precise details regarding the mechanics of delivering the water
22 to the streams had not been provided, Ecology was reasonably assured that the impacts had
23 been appropriately identified and that the proposed mitigation was technically feasible. As
24 described above, consistent with prior 401 Certifications, Condition I requires the Port to
25 submit to Ecology within 45 days of receipt of the 401 Certification a final plan containing the
26

AR 004728

1 elements detailed in the condition. It was not necessary to delay issuance of the 401
2 Certification until receipt of the plan.

3 34. The Port's July 2001 low flow proposal involved lining some of the filter strips
4 in the Walker Creek basin in order to gain sufficient impervious surface in that basin to fill the
5 vault to the level required to offset low flows in Walker Creek. Ecology staff and Mr. Whiting
6 expressed concerns regarding the feasibility of this approach and noted that it upset some of
7 the assumptions underlying the SMP. Concern was also raised regarding potential impacts to
8 Wetland 44A. Whiting Dec. at ¶ 6, p. 8. Therefore, the Section 401 Certification rejected the
9 Port's proposal in this respect and included a requirement that the additional surface water
10 runoff needed to offset flows in Walker Creek be obtained from a 69 acre area that is not
11 contiguous to the Walker Creek basin. The Port has agreed that this requirement is reasonable
12 and can be readily implemented.

13 35. The ACC alleges that the low flow plan is inadequate because the hydrologic
14 models fail to take into account two areas of impervious surfaces: (1) areas of the Industrial
15 Wastewater System lagoon that have been lined, and (2) areas of future business park
16 development at the side of the proposed borrow pits. Neither of these areas are part of the
17 Port's current proposal for which a 401 Certification was sought. Therefore, it would be
18 inappropriate for the 401 Certification to require mitigation for low flows allegedly caused by
19 those areas. Also the alleged future business park development in the borrow pit areas is
20 entirely speculative and may never occur.

21 36. To ensure that water in the stormwater vaults used for mitigation is of adequate
22 quality, Condition I (1)(e) requires the Port to monitor both the water in the vaults and the
23 receiving streams and to take appropriate treatment measures depending on the results of the
24 monitoring. In addition, Condition I of the 401 Certification incorporates several water quality
25 design elements recommended by Mr. Whiting that were taken from the design specifications
26 for wet vaults in King County's Surface Water Design Manual. Whiting Dec. at ¶ 6, pp. 6-7.

**E
X
H
I
B
I
T**

AR 004730

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

AIRPORT COMMUNITIES)
COALITION,)
Appellant)
v.) PCHB NO. 01-133
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY; and)
PORT OF SEATTLE,)
Respondents.)

COPY

DEPOSITION UPON ORAL EXAMINATION
OF
EDWARD O'BRIEN

3:37 P.M.
DECEMBER 21, 2001
2425 BRISTOL COURT SOUTHWEST, ROOM 146
OLYMPIA, WASHINGTON

CINDI L. ULLMAN, CCR# ULLMACL5300P

AR 004731

1 You could also infiltrate water in a trench system
2 where you have pipes under the ground with holes in them,
3 and the water could come out of the -- out of your
4 conveyance system or out of the treatment system and go into
5 that distribution system below the ground surface and then
6 infiltrate.

7 Q. Can you use infiltration facilities to specifically
8 mitigate the low flow impacts and surface water system to
9 which the ground water is discharging?

10 A. Can? Yes, I think you can. It depends on the
11 situation, I guess.

12 Q. Can you control the timing of the flow from
13 infiltration facilities to the stream?

14 A. Can you control the timing of the flows. To a
15 limited extent. What you're doing -- it depends on the
16 hydrology of each situation. But if you're -- you're
17 essentially taking a surface water flow, which may be
18 discharging over a short time period into a stream and
19 instead moving it into the ground where it will have to move
20 through a soil profile to get -- if it's hydraulically
21 connected to the stream, it has to move that direction, and
22 it's probably going to move -- depending upon the size of
23 particles you're going through, it moves more slowly. So
24 depending on your soil type will impact how much you're
25 delaying that flow from potentially getting into the stream

EDWARD O'BRIEN; December 21, 2001

1 anyway. So it varies with -- with that.

2 It can vary with the head that you have as well,
3 meaning the difference in the water level, saturated water
4 level elevation from where you're at and where the stream is
5 at, so there's some different -- but you don't have so much
6 control that you meter it out at some exactly targeted flow
7 rate, probably.

8 Q. Can you control the quality of stormwater through
9 the use of infiltration facilities?

10 A. You can somewhat. So we allow infiltration to
11 also be used as a treatment BMP. If you have certain, a
12 certain soil quality, and the new manual has specifications
13 on that if you meet, we would allow you to use the soil
14 profile as your treatment BMP. But if you don't meet those
15 criteria, then you have to provide some other treatment
16 prior to discharge into the ground, because then we have
17 less confidence that you will get removal of pollutants
18 prior to that infiltrating water coming into contact with
19 groundwater.

20 Q. Are there other types of low flow mitigation
21 facilities that are used in, discussed in the stormwater
22 manual?

23 A. Not that I can think of. Infiltration facilities,
24 our on-site BMPs, that's what we've talked about, and low
25 flow mitigation. Those are the ones that I can think of

EDWARD O'BRIEN; December 21, 2001

**E
X
H
I
B
I
T**

AR 004734



**King County
Department of Natural Resources**

Director's Office
King Street Center
201 South Jackson Street, Suite 700
Seattle, WA 98104-3855

RECEIVED

AUG - 3 2001

DEPT OF ECOLOGY

August 3, 2001

Ann Kenny, Senior Permit Specialist
Washington Department of Ecology
Northwest Regional Office
3190 - 160th Avenue Southeast
Bellevue, WA 98008-5452

Dear Ms. Kenny:

King County is pleased to have this opportunity to work with the Department of Ecology (Ecology) by making its technical review capacity and knowledge of local stormwater conditions available to assist in reviewing the Port of Seattle's *Low Flow Impact Analysis - Low Flow Impact Offset Facility Proposal (July 2001)*.

This analysis of low flow impacts, and the proposed facilities for offsetting identified impacts, constitute a substantial proposal to provide mitigation for natural resource impacts which goes well beyond the basic requirements of the *King County Surface Water Design Manual*. Since this proposal goes beyond the requirements of the Design Manual, reviewers did not have the benefit of clear performance standards for low flow mitigation efforts against which to measure the proposals.

The enclosure provides general comments on the low flow study, as well as specific comments on the analysis and proposed facilities grouped by drainage basin. To assist Ecology, substantial commentary has been included to help clarify the reviewers' understanding of the technical issues and the logic contributing to specific comments.

Reviewers did find several inconsistencies and gaps in data, primarily in the report documentation, that we recommend correcting in the final proposal's preparation. While most of these appear to be minor errors attributable to the multiple iterations and edits that the document has gone through, several of them have the potential to affect facility design and plan effectiveness beyond a trivial amount.

Due to the number of minor corrections needed, we recommend that a final version of the document be prepared that incorporates the necessary corrections and any additional technical memoranda or addenda in a single document. This final document would allow permitting agencies to locate all relevant documentation relating to this portion of the permitting decision

AR 004735

CORPS 81601 00092

Ann Kenny
August 3, 2001
Page 2

and mitigation requirements in a single document, greatly easing record keeping and documentation of compliance.

It is important to note that King County did not review the models for the proposed embankment and offers no comments on the accuracy of predictions derived from these models. Since impacts and subsequent mitigation measures are derived from the embankment models, any shortcomings in the embankment models would potentially affect both predicted impacts and subsequent mitigation measures.

Thank you for this opportunity to continue working together on behalf of the region. If you should have questions regarding our comments please contact David Masters, Senior Policy Analyst, or Kelly Whiting, Senior Engineer, both with the Water and Land Resources Division. David can be reached at (206) 296-1982 or via e-mail at david.masters@metrokc.gov. Kelly can be reached at (206) 296-8327 or via e-mail at kelly.whiting@metrokc.gov.

Sincerely,



Pam Bissonnette
Director

PB:tv F970

Enclosure

cc: The Honorable Ron Sims, King County Executive
Ray Helwig, Northwest Regional Director, Washington Department of Ecology
Tim Ceis, Chief of Staff, King County Executive Office
Kurt Triplett, Deputy Director, Department of Natural Resources (DNR)
Nancy Richardson Ahern, Manager, Water and Land Resources Division (WLRD), DNR
Debbie Arima, Assistant Manager, WLRD, DNR
Curt Crawford, Supervising Engineer, Drainage Services Section, WLRD, DNR
Kelly Whiting, Senior Engineer, Engineering Studies and Standards, WLRD, DNR
Joanna Richey, Manager, Strategic Development Section, WLRD, DNR
David Masters, Senior Policy Analyst, Watershed Coordination Unit, WLRD, DNR

AR 004736

Enclosure #1 - Review Comments - July 2001 Low Flow Impact Analysis - Impact Offset Facility Proposal - Port of Seattle - Parametrix Inc.

Review Comments on the Low Flow Impact Analysis - Flow Impact Offset Facility Proposal, July 2001

Review Scope and Limitations

The July 2001 Low Flow Analysis Flow Impact Offset Facility Proposal (Low Flow Report) has been reviewed for consistency in hydrologic modeling and for consistency in meeting the performance objectives identified by the Department of Ecology (Ecology) and Port of Seattle (Port). The Low Flow Report supplements the Port's Comprehensive Stormwater Management Plan (SMP). While the 1998 King County Surface Water Design Manual (KCSWDM) does not include performance standards for low flow mitigations, the following comments do include some references to KCSWDM design criteria. This review summary concludes that the low flow report proposes substantial mitigations for offsetting low flow impacts annually during the timeperiod when most low flow events occur. There are, however, some significant gaps in the documentation of the analyses performed and the associated mitigations. This enclosure summarizes key findings and recommendations generated from this review. These comments include a substantial amount of commentary as to the reviewer's understanding of the analyses performed.

Review has been limited to the HSPF hydrologic modeling, the impact assessment, and the conceptual design of the associated facilities. With the exception of the hydrologic inputs and outputs, the review of specific aspects of the embankment modeling used in Miller Creek was performed by Ecology staff with expertise in that area.

Review of a stormwater management plan is primarily a review of design concepts and assumptions to determine if the proposed mitigations demonstrate a feasible approach to comply with the identified performance goals. As the proposed Master Plan Update (MPU) development projects move from the planning stages to development of construction plans, the proposed low-flow mitigations may need to be updated to reflect any change in conditions. Prior to construction of specific projects, additional review and approval of the final construction drawings and associated technical information report is typically required. Oversight and monitoring are key elements to successful implementation of any stormwater management plan. It is recommended that Ecology and the Port develop a plan to oversee and monitor compliance with the mitigations set forth in the Stormwater Management Plan and Low Flow Report. One option is to create an Ecology "Compliance Team", representing the necessary disciplines, to work with the Port to achieve compliance with the goals and objectives laid out in the SMP and related documents.

General Comments-

Certification:

The final low flow study should be stamped by a professional civil engineer. The engineering work included in the report should be performed by, or under the supervision of, a licensed civil engineer.

Non-Hydrologic Effects on Low Stream Flows:

The proposed low flow mitigation includes flow augmentation for identified non-hydrologic changes effecting low stream flows. These changes include the removal of septic systems in Walker and Miller creek basins, and the relinquishment of water withdrawal rights in Miller Creek. The water withdrawal numbers have been refined from early SMP drafts. The septic system numbers have also been revised since the 12/00 low flow report. The net effect of these changes is a relatively small additional reduction in calculated future low stream flows (0.01 cfs in Walker, 0.02 cfs in Miller). The Port is proposing to provide additional flow augmentation to offset these non-hydrologic changes during the proposed 3 month mitigation period. Additional water quality benefits are expected associated with the removal of 277 septic tanks from the former residential areas adjacent to Miller and Walker creeks.

While some of the comments below address how the non-hydrologic changes were handled in the low-flow statistics, none are meant to question the appropriateness of the quantity or duration of the proposed non-hydrologic mitigations.

AR 004737

August 2, 2001

CORPS 8 16 01

00094

RECEIVED
JAN 22 2002

ENVIRONMENTAL
HEARINGS OFFICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,)
)
 Appellant,)
)
 v.)
)
 STATE OF WASHINGTON,)
 DEPARTMENT OF ECOLOGY; and)
 THE PORT OF SEATTLE,)
)
 Respondents.)
 _____)

No. 01-160

CERTIFICATE OF SERVICE

I, Andrea Grad, an employee of Helsell Fetterman LLP, attorneys for the Airport
Communities Coalition, certify that:

I am now, and at all times herein mentioned was, a citizen of the United States, a resident of
the State of Washington, and over the age of eighteen years.

On January 22, 2002, I caused to be mailed via U.S. Mail, first class, in properly addressed
and stamped envelopes, a true and correct copy of ACC's Reply on Motion for Summary Judgment
Regarding the Absence of a Water Right for Third Runway §401 Certification, and the Second
Declaration of Michael P. Witek in Support of ACC's Motion for Summary Judgment, with
attachments, in the above-captioned case to:

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

CERTIFICATE OF SERVICE - 1

AR 004738

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Joan Marchioro
Thomas Young
Jeff Kray
Assistant Attorneys General
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117

Linda Strout
Traci Goodwin
Port of Seattle, Legal Dept.
P.O. Box 1209
Seattle, WA 98111


Roger Pearce
Steven Jones
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle, WA 98101

Jay Manning
Gillis Reavis
Marten & Brown LLP
1191 Second Avenue, Suite 2200
Seattle, WA 98101

Richard A. Poulin
Smith & Lowney
2317 East John Street
Seattle, WA 98112

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

DATED this 22nd day of January, 2002, at Seattle, Washington.


Andrea Grad

g:\lu\acc\pchb\certserv-012202.doc