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POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

ENVIRONMENTAL  
HEARINGS OFFICE

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

PCHB No. 01-160

ORDER GRANTING ACC'S MOTION  
FOR SUMMARY JUDGMENT  
REGARDING THE ABSENCE OF A  
WATER RIGHT

(Proposed)

Airport Communities Coalition having filed a motion for summary judgment on Issue No. 9(a) of the stipulated legal issues in this matter, i.e., whether a water right is required for implementation of the Port's low flow mitigation plan for the Third Runway Project; Citizens Against Sea-Tac Expansion having joined in the motion; the Board, having reviewed the following pleadings and exhibits filed in this matter:

1. ACC's Motion and Memorandum for Summary Judgment Regarding the Absence of a Water Right for Third Runway § 401 Certification;

2. Declaration of Michael P. Witek in Support of ACC's Motion for Summary Judgment, with attachments:

a. Declaration of William A. Rozeboom in Support of ACC's Motion for Stay, filed with the Board on September 12, 2001;

b. Declaration of Dr. John Strand in Support of ACC's Motion for Stay, filed with the Board on September 12, 2001;

**AR 005740**

PCHB 01-160  
ORDER GRANTING 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 Ave.  
Spokane, WA 99201

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c. Declaration of Dr. Peter Willing in Support of ACC's Motion for Stay, filed with the Board on September 12, 2001;

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IT IS NOW THEREFORE ORDERED,

That, because there is no reasonable assurance of compliance with water quality standards for the Third Runway Project where there is no water right demonstrating the legal means to permanently

**AR 005741**

1 mitigate low flow impacts, the § 401 Certification is vacated and certification of the Third Runway  
2 Project is denied.

3 SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

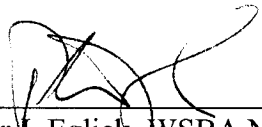
4 POLLUTION CONTROL HEARINGS BOARD

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7 \_\_\_\_\_  
8 KALEEN COTTINGHAM, Presiding

9  
10 \_\_\_\_\_  
11 ROBERT V. JENSEN, Member

12 Presented by:

13 HELSELL FETTERMAN LLP

14  
15   
16 \_\_\_\_\_  
17 Peter J. Eglick, WSBA No. 8809  
18 Kevin L. Stock, WSBA No. 14541

19   
20 \_\_\_\_\_  
21 Rachael Paschal Osborn, WSBA No. 21618

22 Attorneys for Airport Communities Coalition

23 Approved as to Form;  
24 Notice of Presentation Waived:

25 PORT OF SEATTLE

**AR 005742**

1  
2 Linda J. Strout, General Counsel, WSBA No. 9422  
3 Traci M. Goodwin, Senior Port Counsel, WSBA No. 14974

4  
5 FOSTER PEPPER & SHEFELMAN PLLC

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7 Roger A. Pearce, WSBA No. 21113  
8 Steven G. Jones, WSBA No. 19334

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10 MARTEN & BROWN LLP

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12 Jay J. Manning, WSBA No. 13579  
13 Gillis E. Reavis, WSBA No. 21451

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15 Attorneys for Port of Seattle

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17 CHRISTINE O. GREGOIRE, Attorney General

18  
19 Joan M. Marchioro, WSBA No. 19250  
20 Thomas J. Young, WSBA No. 17366  
21 Jeffrey B. Kray, WSBA No. 22174  
22 Assistant Attorneys General

23  
24 Attorneys for Department of Ecology

25  
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**AR 005743**

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POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,	)	
	)	No. 01-160
Appellant,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
STATE OF WASHINGTON,	)	(Section 401 Certification No.
DEPARTMENT OF ECOLOGY; and	)	1996-4-02325 and CZMA concurrency
THE PORT OF SEATTLE,	)	statement, issued August 10, 2001,
	)	Reissued September 21, 2001, under No.
Respondents.	)	1996-4-02325 (Amended-1))
_____	)	

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 4, 2002, I caused to be sent via facsimile and via U.S. Mail, First Class, a true  
and correct copy of ACC's Motion and Memorandum for Summary Judgment Regarding the  
Absence of a Water Right for Third Runway § 401 Certification, the Declaration of Michael P.  
Witek in Support of ACC's Motion for Summary Judgment, with attachments; and a proposed

CERTIFICATE OF SERVICE - 1

HELSELL FETTERMAN LLP  
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Seattle, WA 98101-2509

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2421 West Mission Avenue  
Spokane, WA 99201

ORIGINAL

AR 005744

1 Order Granting ACC's Motion for Summary Judgment Regarding the Absence of a Water Right in  
2 the above-captioned case to:  
3

4  
5 Joan Marchioro  
6 Thomas Young  
7 Jeff Kray  
8 Assistant Attorneys General  
9 Ecology Division  
10 P.O. Box 40117  
11 Olympia, WA 98504-0117  
12 Fax: (360) 586-6760

Linda Strout  
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Fax: (206) 292-6301

14 Richard Poulin  
15 Smith & Lowney  
16 2317 East John Street  
17 Seattle, WA 98112  
18 Fax: (206) 860-4187

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

19 DATED this 9th day of January, 2002, at Seattle, Washington.

21  
22   
Andrea Grad

23 g:\lu\acc\pchb\certserv-010402.doc

24  
25 CERTIFICATE OF SERVICE - 2

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**AR 005745**