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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.)

PCHB No. 01-160
ACC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT REGARDING
ABSENCE OF WATER RIGHT

Appellant Airport Communities Coalition hereby moves for partial summary judgment on the ground that there is no reasonable assurance that the Port has legal means to permanently mitigate the low flow impacts of its proposed project (Issue No. 9 in the November 15, 2001, Supplemental Stipulation Regarding Proposed Statement of Legal Issues). The 401 Certification should be invalidated on this ground.

This motion is based on the stay pleadings, declarations and exhibits submitted to date in this case (which are incorporated here by reference), and on the Board's December 17, 2001, Order Granting Motion to Stay the Effectiveness of Section 401 Certification. The Order states at p. 14:

The issue of whether a water right is required for stormwater detention structures is a case of first impression for the Board. The Appellants have shown a likelihood of success on the merits by showing the low flow augmentation plan is more than just a system to manage stormwater and as such requires a water right to use the stored water to maintain sufficient streamflow. The Appellants have shown, absent a water right, the Port is unable to demonstrate legal means are in place to permanently mitigate the low flow impacts. Without such means, it is questionable whether Ecology had reasonable assurances that the water quality standards would not be violated.

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1 ACC also brings this motion in light of a recent report of a comment by Army Corps of Engineers
2 staff:

3 "At this point in time, we have a valid (state) 401 water quality certification in the record, so
4 the state does not affect our ability to try and make a decision by the end of January," said
5 Muffy Walker, the Corps' project manager for the third runway. "There has been a stay.
6 The 401 (state water quality permit) has not been voided or overturned."

7 "Federal runway review on track," by Annu Mangat, Seattle Daily Journal of Commerce, December 20,
8 2001 (copy attached). Assuming that the Corps staff was correctly quoted, ACC disagrees with the view
9 expressed in light of applicable law.

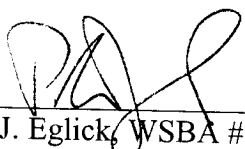
10 In any event, regardless of the Corps' view of the matter, ACC has demonstrated -- and the Board
11 has now concurred -- that the absence of a water right guaranteeing perpetual low streamflow
12 augmentation renders Ecology's claim of reasonable assurance untenable. This is a purely legal issue
13 which can be resolved on summary judgment.

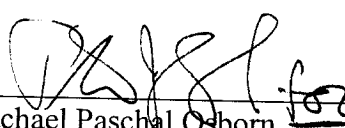
14 Appellant ACC respectfully requests that the Board grant partial summary judgment on Issue No 9
15 (absence of a water right), and issue an order invalidating the 401 Certification on that basis.

16 DATED this 22 day of December, 2001.

17
18 HELSELL FETTERMAN LLP

19
20 By:

21 
Peter J. Eglick, WSBA #8809
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24 Attorneys for Appellant

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Rachael Paschal Osborn
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MOTION FOR PARTIAL SUMMARY JUDGMENT - 2

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December 20, 2001

Federal runway review on track

By **ANNU MANGAT**
Journal Staff Reporter

The U.S. Army Corps of Engineers says challenge of a state environmental permit for Sea-Tac Airport's controversial third runway will not affect review of a federal permit for the project.

A decision from the Corps on the wetlands permit -- one of the two crucial environmental permits needed for the project to move forward -- is expected by the end of January, spokesperson Patricia Graesser said yesterday.

Earlier this week, the state Pollution Control Hearings Board put on hold a water-quality permit, the other key environmental review, for the third runway. The board, a quasi-judicial agency appointed by the governor, ruled that the port had not obtained a water right to maintain flows in creeks. "[T]he port is unable to demonstrate legal means are in place to permanently mitigate the low-flow impacts" in the creeks, the board decided.

But that decision will have no bearing on the Corps' review, officials say.

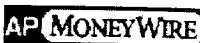
"At this point in time, we have a valid (state) 401 water quality certification in the record, so the state does not affect our ability to try and make a decision by the end of January," said Muffy Walker, the Corps' project manager for the third runway. "There has been a stay. The 401 (state water quality permit) has not been voided or overturned."

However, a host of issues regarding the wetland permit remains on the Corps' radar screen.

Among the key concerns for the Corps is the quality of the fill needed to build the runway. The Port of Seattle, which owns and operates Sea-Tac Airport, intends to fill more than 18 acres of wetlands to build the 8,500-foot runway, one of the state's largest public works projects.

A review of the need for the runway will also fall under the federal agency's scrutiny. The port says it needs a third runway to mitigate weather-related delays. The Corps will be evaluating alternatives, which include a regional airport and flight-management technology.

The 150-foot-high "mechanically stabilized earth wall" for the runway



embankment is another part of the Corps' environmental review. One issue is whether the walls, located in a seismically active area, would be able to withstand an earthquake.

A review of Endangered Species Act requirements for the project has already been completed and approved, officials say. In May, the U.S. Fish and Wildlife and the National Marine Fisheries services, the agencies overseeing ESA rules in the Puget Sound, concluded the port's environmental mitigation plan for the project was acceptable. The Airport Communities Coalition has dropped a lawsuit challenging the project on ESA grounds.

In August, the state Ecology Department issued a water quality certificate for the \$773 million project. The coalition, made up of five cities and a school district near the airport, appealed to the Pollution Control Hearings Board, which on Monday blocked the permit from taking effect.

Hearings on the appeal of the state water-quality certificate are set for March.

"We were surprised and disappointed by the ruling," said airport spokesperson Bob Parker. "We think, particularly on the third runway, that the port is being held to the highest environmental standards that had ever been applied to a development project in this state."

Kevin Stock, a coalition lawyer, called the decision "a significant loss for the port, because, reading the tea leaves, the board is saying (the coalition) has shown a likelihood of success in pointing to three serious and critical flaws in the port's projects in terms of protection of the environment."

Efforts to build a third runway at the largest airport on the West Coast north of San Francisco began in 1987.

Port officials said Tuesday night they had not determined whether to proceed with full construction without the two permits.

The port has spent at least \$250 million on the runway, including placement of about 3 million cubic yards of fill in areas where permits are not required, and acquisition of about 400 homes that lie in the path of the planned runway. All told, the project requires about 20 million cubic yards of fill, the equivalent of more than 34 football fields piled 300 feet high.

Information from The Associated Press was included in this report.

Annu Mangat can be reached at (206) 219-6517 or by e-mail at annu@djc.com.

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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 December 21, 2001, I caused to be sent via facsimile and via U.S. Mail, First Class, a
true and correct copy of ACC's Motion for Partial Summary Judgment Regarding Absence of
Water Right, with attachment, in the above-captioned case to:

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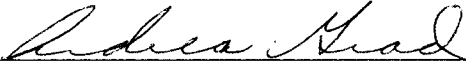
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14 I certify under penalty of perjury under the laws of the State of Washington that the
15 foregoing is true and correct.

16 DATED this 21st day of December, 2001, at Seattle, Washington.

17 
18 _____
19 Andrea Grad

20 g:\lu\acc\pchb\certserv-122101.doc

21
22
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25 CERTIFICATE OF SERVICE - 2

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