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POLLUTION CONTROL HEARINGS BOARD HEARINGS OFFICE
FOR THE STATE OF WASHINGTON

1	AIRPORT COMMUNITIES COALITION,)	
2)	PCHB No. 01-160
3)	
4	Appellant,)	
5)	ACC'S REPLY ON MOTION TO
6	v.)	SUPPLEMENT THE RECORD ON
7)	MOTION FOR STAY
8	STATE OF WASHINGTON,)	
9	DEPARTMENT OF ECOLOGY; and)	
10	THE PORT OF SEATTLE,)	
11)	
12	Respondents.)	

In its Motion for Stay, ACC identified fundamental problems in the Port's low flow analysis and mitigation plan which should have precluded an Ecology determination of reasonable assurance required for issuance of a Clean Water Act § 401 Certification.¹ To rebut ACC's arguments, Ecology offered the Declaration of Kelly Whiting, an engineer with King County who, per interagency contract, functioned as Ecology's expert for review of the Port's Stormwater and Low Flow plans. Recently, Ecology released to ACC under the Public Disclosure Act agency records including an email from Kelly Whiting which, in scathing terms, validated ACC's identification of fundamental flaws in Ecology's reliance on the Port's low flow analysis and mitigation plan.²

ACC therefore made a Motion to Supplement the Record on its Stay Motion with four documents, totaling 14 pages, all focused on the low flow plan and Mr. Whiting's admissions.

¹ See ACC's Memorandum in Support of Motion for Stay at pp. 10-13 and ACC's Reply Memorandum in Support of Motion for Stay at pp. 15-22.
² See October 25, 2001 email from Kelly Whiting, Exhibit B to Andrea Grad Declaration in Support of ACC's Motion to Supplement.

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1 Significantly, Ecology offers no opposition to ACC's motion, nor does it question the authenticity of
2 the Ecology records which ACC has offered in supplementation.

3 The Port's "response" does not even mention Kelly Whiting or address his comments. Instead,
4 the Port attempts to re-argue the merits of the Stay Motion with a third declaration from Paul Fendt,³ as
5 well as to divert the Board's attention by offering other miscellaneous plans and reports regarding the
6 Third Runway. In doing so, the Port makes no Motion to Supplement the record, and thus, these
7 documents should not be made part of the record on the stay.

8 ACC therefore objects to the Port's re-argument of the Stay Motion in "response" to a Motion
9 to Supplement, and asks that the Board ignore this detour.


10 It is not surprising that the Port chooses to talk around – but not about – the Ecology records
11 offered by ACC, including Ecology expert Whiting's pointed indictment of the low flow plan and 401
12 process. It is no wonder that the Port says only, wishfully, that the records are not "significant
13 information" (Port Response, p. 1). As the ancient legal maxim goes:
14


15 *res ipsa loquitur.*⁴

16 Respectfully submitted this 28th day of November, 2001.

17 HELSELL FETTERMAN

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3 If the Board reads and accepts the Fendt Declaration as part of the record, then ACC requests that the Board read and accept the attached Declaration of Northwest Hydraulic Consultants' Bill Rozeboom.

4 "The thing speaks for itself." Black's Law Dictionary (6th Ed.) 1990, p. 1305.