POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION, Appellant, v. DEPARTMENT OF ECOLOGY AND THE PORT OF SEATTLE, Respondents.	PCHB Case No. 01-160 PORT OF SEATTLE'S RESPONSE TO ACC'S MOTION TO SUPPLEMENT

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Respondent Port of Seattle ("Port") has no objection to the Board's consideration of additional documents when necessary. In the case of the motion to supplement the record for the motion to stay, filed by petitioner Airport Communities Coalition ("ACC"), however, there is no need to supplement the record because those documents, when viewed in context, do not provide the Board with significant information. In the alternative, if the Board does wish to supplement the record, the Board should also consider relevant documents submitted by the Port to Ecology since briefing on the motion to stay.

First, the motion to stay was fully briefed and argued to the Board. Reopening the record on a motion that has already been fully briefed will only erode the orderly process of this case. Moreover, although the ACC attempts to sensationalize certain statements from the hearsay emails it wishes the Board to consider, ACC has made no showing that the low streamflow impacts caused by the Port's Master Plan Update ("MPU") projects will not be fully and completely mitigated. The documents provided by ACC do not admit to deficiencies in the hydrologic modeling or mitigation. Rather, they simply describe the process by which the low streamflow analysis is being revised. Moreover, as explained in detail in the accompanying Third Declaration of Paul S. Fendt, the revised Low

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Streamflow Analysis is not anticipated to show any significant change in the total low flow impacts of the MPU projects. The basic modeling approach and calibration of the models is valid, and the information regarding the Airport area is sufficient and well-understood. Most important, all impacts to aquatic resources of area streams will be fully mitigated. To insure this mitigation will be appropriate, the streams will be monitored for many years into the future, and the actual mitigation can be adjusted to meet actual conditions as necessary. Because nothing in the supplemental "evidence" offered by ACC even suggests that full and complete mitigation will not occur, the Board does not need to supplement the record on the motion to stay.

Second, and in the alternative, if the Board decides it should supplement the record, the Board should consider the new relevant documents that have been produced by the Port and its experts and submitted to Ecology since the end of the briefing on the motion to stay. In particular, the Board should consider:

(1) the final Natural Resources Mitigation Plan, which shows that all conditions in the §401 Certification have been met and proposes almost six additional acres of additional in-basin, wetland mitigation;

(2) the Wetland A17 Restoration Plan, which shows how the Wetland A17 complex mitigation will provide additional wetland function mitigation in the Miller Creek basin;

(3) the Construction Best Management Practices and monitoring plans to prevent potential transport of contaminants to soil and groundwater via subsurface utility lines, which show how the subsurface utility lines for the MPU projects will be constructed and monitored to prevent any contaminant transfer; and

(4) the Third Runway Embankment Seepage and Groundwater Monitoring Plan, which shows how both runoff and seepage from the embankment areas will be monitored to ensure that infiltrate does not cause impacts to wetlands or other waters of the state.

The Board should also consider the accompanying Third Declaration of Paul S. Fendt, which explains the changes to the low flow modeling (none of which are anticipated to make a significant change to total low flow impacts) and explains that all low flow impacts to aquatic resources will be fully mitigated.

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II. FACTUAL BACKGROUND

On October 11, 2001 briefing closed on the motion to stay filed by ACC in this case. The Board heard oral argument on October 15, 2001. The briefing and expert declarations from Port experts showed that the low streamflow impacts were being estimated using 47 years of background data and the best modeling tools available, that all impacts to aquatic resources would be fully mitigated, and that the streams would be monitored for the life of the project to ensure that streamflow reductions have been accurately predicted and that appropriate mitigation is provided.[1]

On November 16, 2001 the ACC moved to supplement the record with a letter from the Port's Keith Smith to Ecology and with a number of non-authenticated emails from Ecology's files. The ACC argues that the Board's record on the motion to stay should be supplemented with those documents, because the documents reference revisions to the low streamflow modeling that will be incorporated into the final Low Streamflow Analysis and Low Flow Offset Facility Plans.

As part of the amended §401 Certification, Ecology required to the Port to submit a revised Low Streamflow Analysis and Summer Low Flow Impact Offset Facility proposal.[2] As these documents were being prepared, the Port discovered certain errors in the data handling between the different surface water and groundwater models used in the Low Streamflow Analysis.[3] In particular, the HSPF groundwater model contains a default function that assumes the input is daily units and automatically converts the data to hourly units. Not realizing the model would automatically make the conversion, the modeler manually applied the conversion, and the result was that the modeled embankment flow was only 1/24 of what it should have been – thus overestimating the summer low streamflow impacts in Miller and Walker creeks. In addition, some data inputs between the HSPF (surface water) model and the Hydrus (groundwater) models needed correction. This will result in a small increase in projected impacts to Miller and Walker creeks.[4]

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[1] Declaration of Paul S. Fendt (September 28, 2001); Declaration of Donal E. Weitkamp, Ph.D. (September 27, 2001); Declaration of Joseph Brascher (September 28, 2001)

[2] Third Declaration of Paul S. Fendt ("Third Fendt Dec.") ¶¶ 15 – 17; Amended §401 Certification, Condition I.

[3] Third Fendt Dec.¶ 21.

[4] *Id.*

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As part of the revised Low Streamflow Analysis, the entire modeling process has been peer reviewed by Dr. Norman Crawford, who is a nationally-recognized expert and who originally formulated the modeling tools utilized for the project.[5] As a result of Dr. Crawford's peer review, the Port is refining the modeling in two ways: providing greater detail in the modeling of the "filter strips" adjacent to the new runway and correcting groundwater routing in portions of some of the smaller basins for consistency. The result will be a small revision upward in projected impacts to Miller and Walker Creek and a small revision downward in projected impacts to Des Moines Creek.[6]

It is important to realize that the modeling revisions do not affect the validity of the hydrologic models, how the models were used at the site, or the model calibration. Finally, it is important to point out that the revised modeling also does not change the fact that the underlying information regarding the water flows in the Airport area is valid, well-understood, and adequate for modeling projected impacts. The revised low streamflow analysis is not anticipated to project total low impacts that are significantly larger or smaller than the earlier analysis provided to Ecology.[7]

Moreover, the low streamflow impacts of the project involve relatively small amounts of water.[8] There is ample stormwater storage to mitigate those impacts, which are caused in the first instance by construction of impervious surface that will block existing infiltration paths.[9] After construction of the Port's MPU improvements, the streams in the vicinity of the Port's MPU projects will be monitored for the life of the project, and the low streamflow mitigation can be adjusted to meet actual conditions, so there is assurance that there will be no aquatic impacts.[10] There is appropriate and verifiable information regarding the groundwater and surface water patterns at the Airport, and the modeling tools used are the best tools available.[11] The Port's mitigation will not rely solely on those modeled projections, however, no matter how state-of-the-art that modeling is, and the future low

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[5] *Id.*
[6] *Id.*
[7] Third Fendt Dec ¶ 22.
[8] Third Fendt Dec. ¶ 23.
[9] Third Fendt Dec. ¶¶ 18 – 20.
[10] Third Fendt Dec. ¶¶ 18 – 21, 23.
[11] Third Fendt Dec. ¶ 23.

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streamflow monitoring will assure that the low streamflow impacts are appropriately mitigated to fully protect aquatic resources in area streams.[12]

III. ARGUMENT

The Board's rules for motions make no explicit provision for supplementing the record on motions. WAC 371-08-450. Nevertheless, the Port recognizes the Board's inherent authority to supplement the record under appropriate circumstances. This case is not an appropriate circumstance.

The ACC makes great rhetorical flourishes in its motion to supplement, claiming that the Port has made "admissions of serious and substantial problems with the low flow analysis and mitigation plan." If the Board reads the letter from Mr. Smith to Ecology, however, there is no such admission, there is no serious problem with the low flow analysis, and there is certainly no problem with the proposed mitigation plan. In fact, as explained in detail in the accompanying Third Declaration of Paul S. Fendt, the total low flow impacts are not expected to be significantly greater or lower than originally predicted. There were some errors in data handling between models, and the peer review of Dr. Crawford has suggested some other modeling refinements. These types of revisions are the kind of changes one would expect as a computer model is refined and peer reviewed. The changes will assure Ecology and the Board that the low streamflow impacts are estimated as accurately as possible, using the most appropriate modeling tools available.

These revisions do not amount to a serious problem, however, that might affect whether the project will comply with state water quality standards. Quite the contrary, none of the documents with which ACC wishes to supplement the record even suggest that the low streamflow impacts of the project cannot be fully and completely mitigated. As pointed out by Mr. Fendt, not only is there ample water with which to mitigate all low streamflow impacts, but the modeling revisions do not call into question either the basic modeling approach, the calibration of the modeling, or the validity and adequacy of the historical information used for the modeling. Moreover, even though the historical data regarding surface and groundwater at the Airport are fully sufficient on which to base modeling,

[12] *Id.*

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and even though the modeling tools used are the best available, the Port is not relying solely on predictions of future events. The affected streams will be monitored for the life of the project, and the low streamflow mitigation can be adjusted to meet the requirements of actual conditions – thus assuring that any potential impacts to aquatic resources in area streams will be fully mitigated.

In this factual situation, the Board does not need any supplemental information regarding the low flow analysis. Accordingly, there is no reason to grant ACC's motion to supplement, and there are good reasons to deny ACC's motion. Otherwise, every motion in this case will continue to be re-litigated even after the record is closed.

In the alternative, should the Board wish to supplement the record on the motion to stay. The Board should consider all the new documents that have been prepared pursuant to the amended §401 Certification, and not just the unauthenticated emails that ACC wishes the Board to consider. In addition to the accompanying Declaration of Paul S. Fendt, which fully explains and puts into context the revisions to the low streamflow modeling, the Board should supplement the record with the following:

- The Final Natural Resources Mitigation Plan ("NRMP"). The final NRMP was submitted to Ecology on or about November 20, 2001. That document shows in detail how all conditions in the §401 Certification have been met and how all impacted wetland functions are being fully replaced. In addition, the final NRMP proposes 5.79 acres of additional mitigation in the Miller Creek basin. That mitigation has been planned at the request of the U.S. Army Corps of Engineers to further assure no net loss of wetland functions will result from the Ports MPU projects.[13]

- The Wetland A17 Restoration Plan. This plan was submitted to Ecology on or about November 9, 2001, pursuant to §401 Certification Condition D.4. It shows how the mitigation for these additional wetland restoration and enhancement areas will function, and summarizes how all impacted wetland functions are being fully mitigated.[14]

- Construction Best Management Practices to Prevent Interception of Contaminated Ground Water by Utility Corridors and Plan to Monitor Potential Contaminant Transport to Soil and Ground Water via Subsurface Utility Lines. These documents were prepared pursuant to Condition E.3 of the amended §401 Certification. The Best Management Practices and monitoring plan show how the subsurface utility lines for the MPU projects will be

[13] Declaration of Roger A. Pearce ("Pearce Dec.") ¶2 and Ex. D. Only the appendices regarding the additional proposed mitigation are attached to the Pearce Dec. Should the Board grant supplementation, four copies of the complete NRMP will be provided.

[14] Pearce Dec. ¶ 2 and Ex. A.

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constructed and monitored to prevent any contamination transfer to groundwater and/or surface water at the Airport.[15]

- The Third Runway Embankment Seepage and Groundwater Monitoring Plan. This plan was submitted to Ecology pursuant to Condition E.3 of the amended §401 Certification. The plan shows how both runoff and seepage from the embankment areas will be monitored to ensure that infiltrate does not result in impacts to wetlands or other waters of the state.

All of these plans, as well of the revised Low Flow Analysis which should be ready shortly, are clearly relevant to the issues before the Board on the motion for stay. If the Board decides to supplement the record, it should supplement the record with these documents that have been produced pursuant to the amended §401 certification subsequent to the end of the briefing schedule on the motion to stay, and not only with the hearsay statements in the emails submitted to the Board by ACC.

Respectfully submitted this 26th of November 2001.

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[15] Pearce Dec. ¶2 and Ex. B.

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