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ENVIRONMENTAL
HEARINGS OFFICE

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Received by FAX

Oct 9, 01

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

AIRPORT COMMUNITIES COALITION, <p style="text-align: right;">Appellant,</p> <p style="text-align: center;">v.</p> STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY; and PORT OF SEATTLE, <p style="text-align: right;">Respondents.</p>	PCHB No. 01-160 DECLARATION OF RAY HELLWIG IN SUPPORT OF MOTION TO STRIKE
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Ray Hellwig, declares as follows:

1. I am a Regional Director employed by the Department of Ecology in the Northwest Regional Office. I have personal knowledge of the matters contained herein and I am competent to testify thereto.

2. We periodically receive public disclosure requests from the Airport Communities Coalition (ACC) for documents pertaining to the Port of Seattle's proposal to expand Seattle-Tacoma International Airport (STIA). In response to these requests, I gather all documents that I have responsive to the requests and review them to determine if there is any material that may be withheld from disclosure under the Public Disclosure Act.

3. If I identify documents that are non-disclosable, it is my practice to withhold those from disclosure, or redact non-disclosable portions, and to identify the documents as

AR 006473

1 withheld from disclosure on a log that we maintain of such documents. I certify that attached
2 hereto as Exhibit 1 is a true and correct copy of our log of documents withheld from
3 disclosure. We typically withhold from disclosure all documents that are attorney-client
4 privileged.

5 4. In this case, I inadvertently disclosed to the ACC pursuant to a public
6 disclosure request at least one document containing attorney-client privileged material. This
7 document, which I understand has been quoted by ACC in its pleadings, is a briefing paper I
8 prepared for a senior management team meeting in April 2001. When I reviewed this
9 document for disclosability, I noted that it contained attorney-client privileged material and
10 intended to redact that information from the document prior to disclosure. As shown on
11 Exhibit 1, the document was logged as withheld from disclosure. However, due to a
12 miscommunication between myself and our attorneys, I inadvertently sent the document to the
13 ACC without performing the redaction.

14 5. I recall sending copies of the document to our attorneys for confirmation that it
15 contained attorney-client privileged information that could be withheld from public disclosure.
16 I believe our attorneys redacted the attorney-client privileged information and forwarded the
17 document to the ACC. I certify that attached hereto as Exhibit 2 is a true and correct copy of
18 a letter from our attorneys, that we received showing the documents as withheld and enclosing
19 a redacted version. However, the unredacted document then became intermingled with a
20 stack of numerous other documents that I later sent out pursuant to another disclosure request
21 from the ACC. The disclosure of this document was unintentional and the attorney-client
22 privileged material contained therein should have been redacted.

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

AR 006474

25 DATED this 9th day of October, 2001

26 
RAY HELLWIG

DEPARTMENT OF ECOLOGY
NORTHWEST REGIONAL OFFICE

April 5, 2001

TO: Sally Perkins
Supervisor
Central Records

FROM: Ray Hellwig
Regional Director

SUBJECT: Documents Being Withheld from the ACC's Public Disclosure Request

The following is a list of additional documents, information and/or materials Ecology, Northwest Regional Office, is withholding pursuant to the "exemption" provisions of the public disclosure act. Ecology considers items listed in the first table below as deliberative in nature and exempt from disclosure under provisions of RCW 42.17.310(1)(i).

<u>Author's Name</u>	<u>Addressee's Name</u>	<u>Date</u>	<u>Statement of Subject Matter</u>

The table below itemizes materials held back as Attorney-Client Privilege:

<u>Author's Name</u>	<u>Addressee's Name</u>	<u>Date</u>	<u>Statement of Subject Matter</u>
Ray Hellwig	None	4/3/01	Two pages – one page on notes taken during discussion at an Ecology Senior Management Team meeting relating to stormwater and water rights, policy issue; and one page is typed document regarding the same subject.

AR 006475

If you have any questions regarding the above please call me at 425-649-4310



Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

Ecology Division

2425 Bristol Court SW 2nd Floor • Olympia WA 98502
 Mailing Address: PO Box 40117 • Olympia WA 98504-0117
 (360) 586-6770

June 29, 2001

Andrea Grad
 Helsell Fetterman
 1325 4th Avenue, Suite 1500
 P.O. Box 21846
 Seattle, Washington 98111-3846

RE: **Public Disclosure Request, June 13, 2001, Regarding Water Augmentation**

Dear Ms. Grad:

Enclosed are documents responsive to the public disclosure request referenced above. Certain documents have either been withheld or redacted pursuant to RCW 42.17.310(1)(j) as they constitute materials that are either Attorney-Client Privileged and/or Attorney Work Product under CR 26(b).

There are three categories of documents: (A) Senior Management Team meeting notes; (B) notes from meetings with Port of Seattle representatives and; (C) Water Resources Program Team meeting notes.

The table below itemizes materials that were not produced:

No.	Author's Name	Exemption Claimed	Date	Statement of Subject Matter
1.	Joan Marchioro	RCW 42.17.310(1)(j) and CR 26(b) (Attorney-Client Privileged and Attorney Work Product)	3/14/01	Notes from Water Resources Program Management Team discussing stream-flow augmentation, stormwater and water rights.
2.	Joan Marchioro	RCW 42.17.310(1)(j) and CR 26(b) (Attorney Work Product)	3/22/01	Notes from meeting with Jay Manning, Tanya Barnett, Megan White, Dan Swenson, Steve Hirschey and Bob Barwin regarding Port of Seattle's stream-flow augmentation plan.
3.	Joan Marchioro	RCW 42.17.310(1)(j) and CR 26(b) (Attorney Work Product)	4/2/01	Notes from telephone call with Tom Fitzsimmons and Jay Manning regarding Port of Seattle's stream-flow augmentation plan.

ATTORNEY GENERAL OF WASHINGTON

June 29, 2001
Page 2

4.	Joan Marchioro	RCW 42.17.310(1)(j) and CR 26(b) (Attorney Work Product)	10/31/00	Notes from meeting with Ray Hellwig, Roy Bishop, Dan Swenson, Sharon Metcalf, Tom Pors, Elizabeth Levitt, Jay Manning, Keith Smith, Will Patton, Ray Hoffman, and Guilemette Ragan regarding water rights requirements for Sea Tac Third Runway
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The following documents have been redacted to protect information that is Attorney-Client Privileged. Each document has been numbered to correspond with the number in the table.

No.	Author's Name	Exemption Claimed	Date	Statement of Subject Matter
5.	Ray Hellwig	RCW 42.17.310(1)(j) and CR 26(b) (Attorney-Client Privileged)	4/3/01	Notes from Senior Management Team meeting discussing water rights requirements for Sea Tac Third Runway
6.	Sheryl Hutchison	RCW 42.17.310(1)(j) and CR 26(b) (Attorney-Client Privileged)	4/3/01	Notes from Senior Management Team meeting discussing water rights requirements for Sea Tac Third Runway

If you have any questions regarding the above, please call Sally Perkins at (425) 649-7190.

Sincerely,



JOAN M. MARCHIORO
Assistant Attorney General
(360) 586-6770

JMM:tmr
Enclosures
cc: Sally Perkins, Ecology

marchioro\seatac\pchb 01-090\response to pdr ltr 06-29-01.doc

AR 006477

1-3-01

5000 - Deliberation

SMT
Notes

The question is whether or not we should require the POS to obtain a water right for its SWP. Should any proponent of a major project with an NPDES permit and a 401 Cert, where mitigation is required, and part of the mitigation is to offset impacts to base flows (not augment), have to obtain a water right?

[Redacted text]

NO

While the Port's SMP is massive including numerous facilities, sophisticated modeling shows that the Port's project will have only minor impacts to flows in Miller, Walker and DM Creeks.

Following ~~the~~ advice from a few months back, the Port is proposing to delay release of SW to offset this impact and to protect flows - flows are an element of WQ. The Port is proposing to mimic the natural system and create capacity for the streams to support specific beneficial uses.

[Redacted text]

OST
DIR
DEPA
?

But - Among other issues, there are no guarantees, a water right will not necessarily add certainty in a dry water year.

Further, if flows are an element of WQ - why do we not require a water right to manage peak flows under 402?

Also, it is the WQP interprets the WQ laws and regulations to allow management plans to create capacity for steams to support beneficial uses (the draft SW manual, and draft P-I NPDES SW Muni permit.....)

At what point do we require a water right? If a major project is regulated under a 402, but there is no 401 - no wetland fill - but where water is detained and released and infiltrated in a way to protect flows, do we require a water right? No. For the 304th street LF - water taken to provide adequate hydrology for a wetland - no water right.....

It remains very unclear that it is appropriate to trigger the water code under a 401 - the intent behind the 401 and 402 are the same.

Rachael P's arguments are full of holes - e.g., all SWPs are "managed" -

Shank Prasad

Common Sense

4-3-01

SMT

RAC.P

- Leg. Update (later)
- Right mtg E.U.A
- 3 RCW
- Lower CI
- Sumas Energy

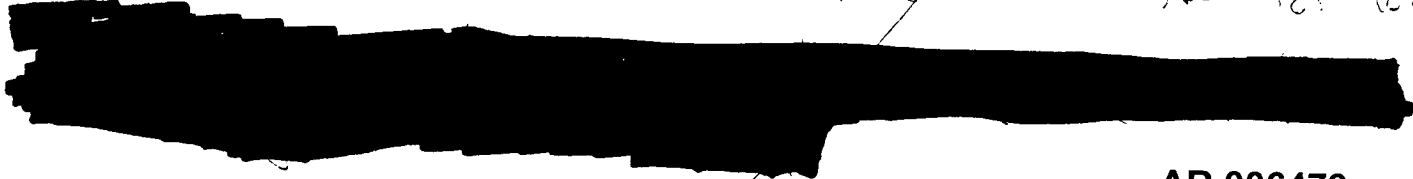


SW & Water Rights (notes)

- ↳ Authority questions -
- ↳ Water in & water out } ? yes or no
- ↳ WIL & NPDES permits } for reclaimed water
- * 401 cover in minor NPDES?

* WL mit for 304 st. Land fill - no water right required

* 401 - 402 intent same - re base flows - see draft SW manual & draft P-1 NPDES mini permit
 ↳ but not require water right for 402



AR 006479

↓ w/ TF are more time - tie up w/ ATAs

IMPOSE > monitoring - BUK pays > enforce

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OCT 10 2001

ENVIRONMENTAL
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10-9-01

**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
PCHB No. 01-160

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, I certify that on October 9, 2001, I caused Ecology's Motion to Strike Attorney-Client Privileged Documents, Declaration of Ray Hellwig and this Certificate of Service in the above-captioned matter to be served upon the parties herein, as indicated below:

Peter J. Eglick
Kevin L. Stock
Helsell Fetterman LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

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- Overnight Express
- By Fax: 206.340.0902

AR 006480

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3 2421 West Mission Avenue
4 Spokane, WA 99201

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- By Fax: 509.328.8144

5 Linda J. Strout, General Counsel
6 Traci M. Goodwin, Senior Port Counsel
7 Port of Seattle
8 2711 Alaskan Way (Pier 69)
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10 Seattle, WA 98111

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19 Seattle, WA 98101

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20 Jay J. Manning
21 MARTEN & BROWN
22 421 S. Capitol Way, Suite 303
23 Olympia, WA 98501

- U.S. Mail
- State Campus Mail
- Hand Delivered
- Overnight Express
- By Fax: 360.786.1835

24 the foregoing being the last known business address.

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

DATED this 9th day of October, 2001, in Olympia, Washington.

27
28 
29 TANYA M. ROSE
30 Legal Assistant

31 f:\marchioro\seatac\pchb 01-160\cos.doc

AR 006481