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HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

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3	AIRPORT COMMUNITIES	)	No. 01-133
4	COALITION,	)	No. 01-160
5	Appellant,	)	
6	v.	)	DECLARATION OF ROBERT
7	STATE OF WASHINGTON,	)	SHECKLER IN SUPPORT OF ACC'S
8	DEPARTMENT OF ECOLOGY; and	)	REPLY ON MOTION FOR STAY
9	THE PORT OF SEATTLE,	)	
10	Respondents.	)	(Section 401 Certification No.
11		)	1996-4-02325 and CZMA
12		)	concurrency statement, issued August
13		)	10, 2001, Reissued September 21,
14		)	2001, under No. 1996-4-02325
15		)	(Amended-1))

Robert Sheckler declares as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated herein.

2. I am Mayor Pro Tem and a City Councilmember for the City of Des Moines, Washington. I am also Chair of the Airport Communities Coalition (ACC) Executive Committee. The ACC Executive Committee, per interlocal agreement of the ACC jurisdictions (Burien, Des Moines, Federal Way, Normandy Park, Tukwila, and the Highline School District), has engaged a number of independent scientists and technical experts to review and comment on the Port of Seattle's successive Clean Water Act Section 401 applications for certification of the Port's third runway and related major projects.

3. ACC has taken an active role in this process because of the dramatic effect which construction of the third runway would have on our member jurisdictions. We have particular

DECLARATION OF ROBERT SHECKLER IN  
SUPPORT OF ACC'S MOTION FOR STAY - 1

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1 stewardship responsibilities under state law and our own municipal codes for the streams and  
2 watersheds within our boundaries, including Des Moines Creek, Miller Creek, Walker Creek, and  
3 Gilliam Creek, as well as various small lakes, all of which will be affected by the Port's projects. The  
4 value of these resources to the communities is illustrated by how we use them.  
5

6 4. For example, the mouth of Des Moines Creek is located in Des Moines Beach Park, a  
7 major focus for our community. The park includes a marina, senior center and numerous historical  
8 buildings, and is enjoyed by South King County residents as a whole for its water-oriented amenities.  
9 Based in part on its concern for this park, the City of Des Moines takes very seriously its stewardship  
10 responsibilities for the creek and its watershed.  
11

12 5. Similarly, as ACC's original Notice of Appeal to this Board, filed in August, describes,  
13 the Normandy Park Community Recreation Center sits at the mouth of Miller Creek. This community  
14 beach parcel includes a community club building, tennis courts, swim club, baseball fields, boat launch  
15 and picnic areas on the beach and near the streams. Miller and Walker Creeks flow around and  
16 through the community center property, providing a beautiful natural setting for community activities.  
17 From an early age and through their school years, children are taught about and enjoy the streams and  
18 lakes and participate in field trips and stream restoration projects on them. Over the years our  
19 community groups have undertaken significant efforts to protect and enhance these streams and make  
20 them fish-friendly. Many residents fish in the streams and lakes.  
21

22 6. I am aware that some of the statements submitted to this Board in opposition to ACC's  
23 request for a stay, including statements by Department of Ecology personnel, suggest that the Port's  
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1 proposal should be viewed as a stream restoration project, reversing supposed neglect by our  
2 communities. This presents an inaccurate and distorted picture to the Board. The homes and  
3 neighborhoods whose elimination the Port and Ecology cite as elements of the “restoration” project  
4 were mature rural/suburban communities. These should not be confused with the gashes across the  
5 environment which new plats in other locations may sometimes create. The neighborhoods’ vegetation  
6 is mature, the houses by and large modest, and the lots not intensely developed. The Port’s and  
7 Ecology’s attempt to demonize these mature neighborhoods which were living in supportive co-  
8 existence with the area streams and wetlands into entities whose obliteration is synonymous with  
9 watershed restoration is a gross distortion.  
10

11  
12 7. In fact, those neighborhoods and our communities as a whole have valued and protected  
13 the quantity and quality of water in our streams. We are vitally concerned about the headwaters and  
14 wetlands of those streams which are within the third runway project construction impact area, and,  
15 based on advice from our scientists, we are particularly concerned that Ecology’s 401 Certification  
16 does a disservice to the community because it is not based on actual reasonable assurance that water  
17 quality standards will not be violated.  
18

19 8. As ACC Chair, and as a long-time elected official in this area, I can therefore convey to  
20 the Board that the Ecology and Port claims of “overriding public interest” in opposition to a stay are  
21 not well-founded. For example, I am aware that the Department of Ecology suggests that a stay of its  
22 401 decision would prevent Ecology from providing environmental protections that would otherwise  
23 apply as the Port proceeds with construction work. In fact, Ecology, despite repeated requests, has not  
24

25 DECLARATION OF ROBERT SHECKLER IN  
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1 offered any environmental protection for work which the Port has already performed over the past  
2 many months at what the Port calls "its own risk." We appreciate that Ecology has, belatedly,  
3 apparently come to the realization that such work ought to be subject to environmental regulation. It  
4 does not make sense, however, to suggest that the need for environmental protection creates an  
5 overriding public interest against a stay of a 401 decision which, if implemented, will not protect water  
6 quality, according to ACC's scientists and Ecology's own former senior 401 expert.

8 9. I am also aware of the Port's arguments for overriding public interest, which basically  
9 amount to a claim that the Port cannot afford to lose a single day in pursuing its third runway project.  
10 In fact, the Port itself delayed the project for several years by failing to submit competent application  
11 materials to Ecology for 401 certification. The Port's first 401 application resulted in a decision by  
12 Ecology which the Port promptly appealed, claiming that it was too stringent. That certification and  
13 the Port's application were subsequently withdrawn when it was learned that the Port had not  
14 accurately represented the amount of wetlands which would be impacted by its project. The Port's  
15 second 401 certification application, submitted in the fall of 1999, was withdrawn one year ago, when  
16 the Port was advised by Ecology that, if it were not withdrawn, it would have to be denied. Shortly  
17 after, Tom Luster, Ecology's longtime 401 expert who had given the public at large some basis for  
18 confidence in Ecology's review process, was abruptly removed from responsibility for review of the  
19 Port application. The Port then subsequently reapplied for a third time and obtained certification  
20 approval in August, 2001. As the Board knows, Ecology later rescinded and reissued its August  
21  
22  
23  
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25 DECLARATION OF ROBERT SHECKLER IN  
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1 certification in September, 2001, with amendments to satisfy Port complaints about the August  
2 conditions.

3 10. ACC scientists -- and Tom Luster -- have testified in writing to the Board that the flaws  
4 in the first two applications were not cured in the third, and that the difference appears to be in how  
5 Ecology has viewed the application, applied the applicable standards for 401 certification, and allowed  
6 the Port to defer resolution of issues which have been outstanding now for more than three years.

7  
8 11. In light of this history of delay by the Port, its suggestion that the Board should deny a  
9 stay of the 401 because there is an overriding public interest in immediate commencement of the  
10 project, which can brook no delay, does not ring true. The overriding public interest here must be in  
11 the integrity of the 401 certification process, whose ultimate goal is to protect water quality. The  
12 history of the Port's applications and the basis on which its third application was finally approved  
13 demonstrate that the overriding public interest here must be in ensuring that the Board has an  
14 opportunity to review the 401 Certification and make an effective decision on it before implementation  
15 commences. At best, the "public interest" which the Port and Ecology cites is one among many, and  
16 does not override these vital considerations.  
17  
18

19 I declare under penalty of perjury under the laws of the State of Washington that the  
20 foregoing is true and correct.

21 DATED this 6<sup>th</sup> day of October, 2001, at DES MOINES, Washington.

22  
23   
Robert Sheckler

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25 DECLARATION OF ROBERT SHECKLER IN  
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