

1/25/01

Comments - may be useful

Notes for the 3RW Public Meetings and Hearings - January 26 and 27 '01

- My name is Ray Hellwig and I am the Director of Ecology's NW Region. I am a member of the agency's SMT and I consult regularly with other managers, policy and technical staff and our attorneys regarding runway-related proposals.
- With me is Ann Kenny. Ms. Kenny is a senior Environmental Specialist at our region with over 10 years of regulatory experience including extensive experience with 401 WQ Certifications. She is a veteran reviewer of major projects including the RTA heavy rail project. Ms. Kenny works with personnel in other Ecology programs, such as WQ and Shorelands/Wetlands to determine whether a project should be approved, conditioned or denied.

I hired Ms. Kenny as a 401 reviewer about 3 years ago when we regionalized the function. She received training from Tom Luster who worked out of our HQ Office.

1. When will Ecology make a decision?

When we have received sufficient information from the Port, and have sufficient time to review it.

2. Has Ecology already made up its mind?

No, Ecology is currently in the process of reviewing the Port's application. We will not approve the project unless we are convinced it will comply with all pertinent environmental laws and regulations and that we can achieve our environmental objectives.

3. Why is the process closed, and why do you have so many meetings, some secret, with the Port?

It's a routine part of our job to meet with project proponents and clarify for them what is required by the law, and what would be necessary for us to be able to approve their project. We won't approve the project until those requirements are met. Ecology has received comments from those concerned about the project and we have considered those concerns as the process has moved forward. We held a few meetings with groups opposed to the project.

4. What is your role in the project review process?

I am the spokesperson for the Director in the region. My job includes pulling together technical experts from multiple programs to work through issues and solve problems associated with numerous proposals.

5. Why did you reassign staff already reviewing the 3RW?

Reassigning staff is one of the many functions associated with workload management. We did not anticipate that review of the runway project would last as long as it has, we

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have needed to assign staff back to other priority work that has not received adequate attention. Mr. Erik Stockdale asked me to facilitate his reassignment to other priorities.

6. Why are you using contractors paid for by the POS to review the Port project?

It's a capacity issue. We review thousands of various types of projects and make scores of 401 Certification recommendations each year. We advised the Port that we would not have time to review their project in the timeframe they were interested in without additional resources. The Port agreed to pay for consultants that report to Ecology i.e., they are Ecology's consultants, the Port pays for them, but they do not report to the POS. The Port does not have direct access to the consultants, all communications are through Ecology.

7. How can you move ahead with review of the project when SEPA has not been properly followed?

The federal agencies have the lead for NEPA, and the POS has the lead for SEPA. We will evaluate the adequacy of SEPA more thoroughly as part of our CZM consistency determination.

8. Why is Ecology not considering the 509 temporary interchange as part of the 401 review for the runway?

The interchange will be regulated through a MM to the Port's NPDES permit as a temporary construction facility. The permit needs to identify Walker Creek. There are no direct impacts to wetlands.

9. Why has the Port been allowed to build a parking lot and work in/on the SASA site without a 401 Certificate?

This work is authorized through the temporary construction facility provisions in the NPDES permit. The Port submitted a SWPPP and monitoring plan.

10. Why doesn't your 401 review include the South Access Road?

This is a separate project. When the application is received from the DOT, it will be reviewed and evaluated for impacts - a mitigation plan would have to be developed and approved before the SAR project could move forward.

11. Why did Ecology start to withhold information through the public disclosure process?

We make every effort to be open with documents. In very limited instances we hold back materials that are attorney client privilege, or pursuant to the deliberative process exemption provided for in the PRA. The exemption recognizes that employees in state agencies need to be permitted to internally *debate and work through complex issues*. *Once the issues are worked out, the materials can be released.*

12. The "Agreed Order", how is being treated in your 401 review process?

The AO pertains to a set of circumstances and regulatory requirements separate from the 3RW and associated projects. Having said that, however, the 401 will be conditioned to

indicated that the Port must comply with all other state laws and regulations relating to the project.

13. What about the Governor's Certificate?

The project will have to comply with all other pertinent state laws and regulations, including the GC. The 401 will be conditioned accordingly.

14. What are you going to do about the ESA?

We don't enforce the ESA but we need to take it into account when we make decisions. We make decisions consistent with our laws and authority – that are defensible vis a vis the requirements of the ESA (i.e., decisions that provide protection pursuant to the "take" provisions of the ESA.)

15. Why isn't the Port proposing flow augmentation? Won't Ecology require this?

The Port's proposal will need to include provisions addressing how it will compensate for impacts its project has on base-flows. We are in the process of evaluating their proposal accordingly.

16. Is the Port receiving special treatment or consideration? Has the Governor put pressure on Ecology to approve the project?

The Port is receiving attention for this project commensurate its size i.e., it is a major project and requires resources adequate to review it.

The Governor support Ecology's decision making process for this project i.e., that ECY should only make a decision once it has sufficient information and sufficient time to review it.

17. How can you consider a 401 permit when the Port is out of compliance with its 402 permit?

We have not determined that the Port is currently out of compliance with their permit. In the past, the Port has taken appropriate action when there have been compliance issues.