

Luster, Tom

From: Luster, Tom
Sent: Wednesday, October 20, 1999 10:38 AM
To: Luster, Tom
Cc: 'Luster, Tom -- at home'
Subject: SeaTac/Reasonable Assurance

I met with Paula yesterday to discuss a number of issues, projects, etc. We spent about an hour talking about what it means to comply with water quality standards, how beneficial uses fit into our 401 decisions, and how all of this applies to SeaTac.

She said there was great concern from management (Gordon, Megan, John Glynn) that I was holding the Port to an unreasonable standard. I again explained that I was only looking for compliance with water quality standards, including instream flow -- because Des Moines Creek had been identified as impaired due to extremely high storm flows and low summer base flows (identified in the Basin Plan prepared in part by the Port), I couldn't have reasonable assurance that standards would be met unless we had adequate information and mitigation to show that those uses could be maintained and protected.

The Port had originally included measures to address those issues as part of their mitigation plan -- Level 2 stormwater detention and flow augmentation -- which would allow me to get to reasonable assurance on those issues for purposes of 401. The Port has since dropped the flow augmentation mitigation element due to the previous water right issue (though I understand they are negotiating with the Highline Water District to obtain the necessary water right). We still have a commitment from the Port to provide Level 2 detention, but their primary proposal is to use the proposed RDF, which has not been designed, evaluated for impacts, or gone through the permit process yet (the Port does have an alternative to provide Level 2 detention through wet vaults).

She was concerned that I was making the Port mitigate for low flow impacts it wasn't going to cause -- I reminded her that the Port's analysis showed that the proposed Port projects would result in 7 to 13% further diminished flows in Miller and Des Moines Creek, and that this would not be approvable without some flow augmentation mitigation (and later provided her some text from the Port's mitigation plan showing these figures).

My primary concern from the meeting was that Paula asked if I could provide reasonable assurance at this point on the Port's proposal, especially the stormwater elements -- I said that I didn't right now, but I thought I could get to that point. She said that because I didn't, the project review might be moved to NWRO. I said that I thought I could get to the point of reasonable assurance, but that it was not appropriate to get there now, based on the current Port proposals -- there are still a number of issues on wetland mitigation (e.g., FAA language, easement language, etc.), the stormwater plan was not yet adequate for purposes of 401, etc. More importantly, the preponderance of evidence shows not only that the Port's current proposal will not meet water quality standards but that it will result in violations of water quality standards (including specifically -- inadequate BMPs proposed for stormwater treatment, and no flow augmentation). Additionally, we haven't gone through the public process yet, so it would be inappropriate for anyone at Ecology to have reasonable assurance until we hear and assess concerns and issues raised through public comments.

I told her I was willing to stay on the project and that I would continue working through the water quality issues with Kevin, but that I would not provide reasonable assurance at this point. I said if anyone provided it at this point, it would be inadequate based on the current proposal. I said I was still interested in helping Ecology get to a defensible decision, and that if she wanted someone to just approve the project right away, it would have to be someone else. I told her that don't want this to be another big project (BMG was the first) where when I raised some tough issues, management's response was to take my decision-making responsibility away for political purposes.

I also asked that if management had concerns or questions about the issues I've raised, that she ask them to talk directly to me.