

STOCKDALE, ERIK

AR 028843.01

Summary Statement for Deposition Publication

**submitted pursuant to
Order Granting Appellant's Motion to Publish Depositions
of Ecology Managers and CR 30(b)(6) Designated Witnesses
dated March 19, 2002**

***ACC & CASE v. Dept. of Ecology & Port of Seattle,
PCHB No. 01-160***

Deponent: Erik Stockdale

Date of Deposition: January 23, 2002

1. Admissibility

A. Purpose used for or what it will be offered to prove: lack of reasonable assurance with regard to wetlands and wetlands mitigation.

B. Specific designation (if CR 30(b)(6) deponent): Mr. Stockdale is the Ecology's wetlands staffperson whose recommendation has been cited as the basis for reasonable assurance by Ecology.

C. Basis for admissibility if challenged by objection: If an objection is attached pursuant to provision 4 below, ACC's and CASE's response is also attached.

2. Excerpting: The following portions of the Stockdale deposition are offered by ACC and CASE:

Page 5 line 10 through page 6 line 6
Page 7 line 12 through page 11 line 21
Page 28 line 7 through page 39 line 4
Page 41 line 7 through page 56 line 19
Page 61 lines 4 through 13
Page 65 line 2 through page 71 line 8
Page 75 line 17 through page 80 line 19
Page 82 line 25 through page 88 line 10
Page 94 lines 6 through 12
Page 104 line 22 through page 105 line 5
Page 108 lines 3 through 20
Page 111 line 1 through page 112 line 10
Page 114 lines 1 through 10
Page 116 line 23 through page 118 line 16
Page 126 line 19 through page 127 line 21

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Page 129 line 17 through page 130 line 8
Page 135 line 23 through page 136 line 25
Page 138 line 23 through page 148 line 11
Page 149 line 4 through page 150 line 23
Page 157 lines 19 through 25
Page 158 line 16 through page 160 line 24
Page 165 line 25 through page 181 line 13
Page 184 line 13 through page 186 line 25
Page 198 line 16 through page 204 line 20

3. **Counter Excerpt of Respondents:** See attached.
4. **Objections of Respondents:** See attached.

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AR 028845

ACC & CASE v. Dept. of Ecology & Port of Seattle
PCHB No. 01-160

Department of Ecology's Designation of Additional Portions of
Deposition and Objections Entered Pursuant to the
Board's Order of March 19, 2002 and Port of Seattle's
Joinder in those Objections and Designations

Deponent: **Erik Stockdale**

Date of Deposition: **January 23, 2002**

3. Counter Excerpts by Respondent Department of Ecology:¹

<u>START</u>	<u>END</u>
Page 56, line 24	page 65, line 1
Page 74, line 6	page 74, line 19
Page 93, line 18	page 93, line 20
Page 107, line 21	page 108, line 2
Page 118, line 17	page 119, line 2
Page 125, line 7	page 126, line 18
Page 127, line 22	page 129, line 2
Page 131, line 4	page 134, line 3
Page 137, line 1	page 138, line 13
Page 150, line 24	page 155, line 1
Page 158, line 4	page 158, line 11
Page 191, line 7	page 193, line 13
Page 196, line 18	page 198, line 15
Page 204, line 21	page 206, line 21
Page 214 (Completed Correction and Signature page)	

4. Objections to Designations by Appellants:

A deposition is admissible in this hearing only to the extent that the same testimony would be admissible in this hearing if the deponent were then present and testifying as a witness. CR 32(a); WAC 371-08-300(1) and (2). Therefore, Ecology renews its objection to publication of this transcript and submits the following objections to particular portions of the transcript.

¹ By designating counter excerpts, Ecology does not waive its objections to ACC's and CASE's publication of this transcript. Those objections are reflected in Ecology's Response to Appellants' Motion to Publish and in argument before this Board. Further, Ecology does not waive its objections to ACC's and CASE's use of particular portions of the transcript. Those objections are identified in subsection 4 of this document.

General objection: Mr. Stockdale has testified in this matter and Ecology has not had the opportunity to review the hearing transcript. Mr. Stockdale's deposition was used during his testimony. To the extent ACC and CASE now designate those portions of the deposition referenced during his testimony, Ecology objects to those portions of the transcript as asked and answered.

<u>START</u>	<u>END</u>	<u>OBJECTION</u>
Page 7, line 43	page 11, line 21	No relevance to the factual or legal issues before the PCHB and beyond the scope of the purpose for which this witness' testimony is designated. Questioning relates to the Ports condemnation of property for the third runway.
Page 43, line 16	page 44, line 1	Calls for a legal conclusion.
Page 66, line 16	page 71, line 7	Lack of foundation and of no relevance to the factual and legal issues before the PCHB. Testimony relates to FAA project Tracon.
Page 82, line 25	page 84, line 8	Relevance. Testimony regarding in-basin mitigation and the potential that those mitigation activities would have to increase the bird strike hazard in and around the airport. No relevance to the issue of reasonable assurance.
Page 87, line 19	page 87, line 22	Lack of personal knowledge. Counsel has quoted from an e-mail written by another person and then asked the witness to state what that person is referring to when they talk of secondary and cumulative impacts to watersheds.
Page 104, line 22	page 105, line 5	Relevance. The testimony is irrelevant to the factual and legal issues before the PCHB and given the limited amount of testimony designated it is confusing as to what the witness is being asked. On page 104, lines 22-24, only the answer is designated. Even if the question preceding the answer was designated, it is unclear as to what was being asked of the witness. The questioning relates to monitoring for bird strikes which is irrelevant to the purposes for which this witness' testimony is being designated and of no relevance in understanding the factual and legal issues before the PCHB.
Page 111, line 1	page 112, line 9	Relevance. Testimony regarding an e-mail date 7/17/00 from witness to Luster regarding Tracon.
Page 117, line 15	page 118, line 16	Relevance. This testimony is of no relevance to the factual and legal issues before the PCHB and

beyond the scope of the purpose for which this witness' testimony has been designated. Discussing recommendation that the Port make documents and maps regarding the project available on the web.

Page 126, line 19 page 127, line 21

Page 129, line 17 page 130, line 8

Misleading. Appellants have designated limited portions of the testimony regarding questions related to issuance of the 401 certification and contacts with the Governor's Office. By taking the testimony out of context and electing not to designate that portion of the testimony where the witness states he was not pressured to make a decision that he felt couldn't be supported, the reader is left with the implication that the contrary is true.

Page 129, line 17 page 130, line 9

Relevance. Testimony regarding call from Governor's Office as to what occurred at a meeting with the Port.

Page 135, line 23 page 136, line 25

Page 138, line 23 page 148, line 11

Relevance. Testimony regarding selection of Katie Walter and not Dyanne Sheldon as Ecology's consultant on wetlands. Note that on page 140, line 17-21, the question was withdrawn by counsel.

Page 175, line 23 page 181, line 13

Irrelevant. Testimony regarding Ecology authority to regulate prior converted croplands and discussion of ports authority to argue for reduced property valuation in a condemnation proceeding.

PORT JOINS ECOLOGY'S DESIGNATIONS AND OBJECTIONS

Counsel for the Port of Seattle have reviewed Ecology's designations and objections. The Port joins in all of Ecology's designations and objections.

**Appellants' Responses to Objections Raised by Ecology and the Port
To the Publication of Depositions of Ecology Managers and
CR 30(b)(6) Witnesses**

ACC & CASE v. Dept. of Ecology & Port of Seattle,
PCHB No. 01-160

Deponent: Erik Stockdale

Date of Deposition: January 23, 2002

Response to Counter Excerpts by Department of Ecology:

<u>Start</u>	<u>End</u>	<u>Response to Counter Excerpts</u>

93:18	93:20	This selection by Ecology cuts off the remainder of the colloquy and should continue through page 94, line 12.

118:17	119:2	The "counter excerpt" to be complete should continue through page 126.
125:7	126:18	See comment above.
127:22	129:2	The Board should continue reading through page 130.
131:4	134:3	The Board should continue reading through page 136.
137:1	138:13	The Board should continue reading through page 148.
150:24	155:1	The Board should continue reading through page 160.
158:4	158:11	See comment above.
191:7	193:13	The Board should continue reading through page 196.
196:18	198:15	The Board should continue reading through page 204.
204:21	206:21	The Board should read the entirety of pages 198 through 210, line 12.

Response to General Objection:

The Board has already held that, pursuant to the Civil Rules, the deposition of Mr. Stockdale, Ecology's designated wetlands expert, is published for purposes of the hearing and may be used for matters related to wetlands. Ecology's "general objection" is an attempt to reargue that ruling. Therefore, the "asked and answered" during trial objection is not a proper objection to Board review. The Civil Rules explicitly contemplate that deposition testimony by institutional representatives such as Mr. Stockdale will be reviewed by the decision-maker, regardless of what additional testimony may or may have been given at trial.

Responses to Specific Objections:

General Response to Specific Objections: Many of respondents' objections are barred by their failure to comply with CR 32(d)(3)(B). Respondents failed to make the necessary objections at the deposition, when corrections could have been made (e.g., to the form of the question, in response to an objection as to foundation, etc.). The rule is clear that, in such circumstances, the objections are waived -- and for good reason. Otherwise, the party failing to object could prevent the introduction of deposition testimony merely by adopting a strategy of failing to speak up at the time of the deposition. That seasonable objections are required is hornbook law. For example, the Washington Civil Procedure Deskbook, published by the Washington State Bar Association, notes:

In essence, the rule provides that if the ground for the objection could have been "removed," "obviated," or "cured" by prompt objection, the objection is waived if not made "seasonably." In ruling on the admissibility of the testimony at trial, the court will not limit its examination solely to the challenged question. Even if the question is "technically objectionable," the answer may be admissible if it constitutes "proper evidence." *Safeco Insurance Co. v. Pacific Indemnity Co.*, 66 Wn.2d 38, 401 P.2d 205 (1965).

Washington Civil Procedure Deskbook at p. 32-16. In particular, the Deskbook warns that objection as to the form of the question, objection as the lack of foundation, objection claiming that a question calls for speculation and similar objections must be made during the deposition or are waived because the objection would "give the opportunity for the examiner to rephrase the question, thus curing the defect." *Id.* at 32-17; see, *id.* at 32-21; *Young v. Group Health Cooperative*, 85 Wn.2d 332, 534 P.2d 1349 (1975). Further, as the deskbook confirms, even technically objectionable questions in depositions are to be allowed when "the answer furnishes proper evidence. Substance, rather than form, should be heeded." *Safeco Insurance Co.*, *supra*, 66 Wn.2d at 41.

Further, it is noted that many of Ecology's "specific objections" are, in reality, attempts to spin-doctor the testimony which Mr. Stockdale gave or to present argument to the Board on the issue addressed by the testimony, and do not offer any

colorable legal reason as to why the testimony should not be reviewed. Such objections are both improper and, at the same time, revealing in that they demonstrate, once again, that Ecology's real concern is not with procedural issues relating to deposition questions, but with preventing the Board from becoming aware of the substance of Mr. Stockdale's testimony.

<u>Start</u>	<u>End</u>	<u>Response to Objection</u>
7:43	11:21	Ecology's objection is, at best, frivolous. These questions relate directly to Ecology's knowledge that, while the Port was requesting (and ultimately received) mitigation credit for Vacca Farm as if it was <u>not</u> a functional wetland, the Port was arguing in its condemnation action for Vacca Farm in superior court, with Ecology's knowledge, that Vacca Farm <u>was</u> a functioning wetland and therefore the owners' claims for compensation were inflated.
43:16	44:1	The objection was not well-taken because the question was directed to Ecology's expert on wetland matters. Further, the Board allowed such questions during the recent trial. Finally, in response to the objection at deposition, the question was modified to ask for the witness' knowledge (see p. 43, line 25).
66:16	71:7	Objection waived: no objection made at deposition. Further, the objection that the topic has no relation to issues before the PCHB is disingenuous. The line of questioning with Mr. Stockdale went to whether Ecology's review of the Master Plan Update and associated proposals included the FAA TRACON project which is to be constructed, as Mr. Stockdale confirmed, on the third runway site. The testimony reflects that Mr. Stockdale originally made inquiries about the ten-acre project and its impacts, and then dropped the matter. This is directly relevant to whether Ecology improperly limited the scope of its review (and of the 401 Certification) to downplay the water quality impacts of the overall project.
82:25	84:8	Objection waived: no objection made at deposition. Further, Ecology's objection mischaracterizes the testimony and relies on the mischaracterization to argue for lack of relevance. In fact, the testimony is directly relevant to issues discussed extensively, e.g., during the recent trial before the Board.

87:19	87:22	Objection waived: no objection made at deposition. Mr. Stockdale testified concerning his understanding of the context and content of an email which was sent to him by the Army Corps of Engineers wetlands expert, Gail Terzi. He was then examined concerning <u>his</u> understanding of the issues raised in the email. Mr. Stockdale can clearly be examined about his understanding of such matters.
104:22	105:5	Ecology once again seeks to prevent the Board from reading any colloquy from Mr. Stockdale in which he acknowledges that he suggested that a monitoring study be performed to determine whether bird strikes were actually a hazard with regard to area wetlands, and further acknowledges that such a study was never performed. This issue was discussed throughout the Board trial and in fact has been cited as a basis for the wetlands mitigation ultimately approved by Ecology. Ecology's relevance objection is frivolous.
111:1	112:9	Ecology again objects to any reference to the ten-acre FAA TRACON project being built on the third runway site on land provided by the Port, and to any reference to Ecology's failure to consider its impacts in the 401 certification process. This issue is directly relevant to whether Ecology improperly limited the scope of its review (and, ultimately, of the September 401), an issue raised squarely in the testimony before the Board by Tom Luster and others.
117:15	118:16	Ecology's objection is, again, not well-taken. Ecology has consistently touted its 401 process as non-pareil. Yet, it seeks to prevent the Board from learning that Ecology's wetland expert suggested to one of the Port's wetland experts a means of making that process, at least with regard to wetlands issues, readily manageable and available to interested parties (including agencies) through publication of documents necessary for review.
126:19 129:17	127:21 and 130:8	Ecology's objection that ACC has selected out only portions of the deposition testimony is ironic. ACC originally proposed publication of the depositions <u>in their entirety</u> for Board review. Ecology objected, and complained, <i>inter alia</i> , that only specific portions should be read by the Board. Ecology now complains that ACC has selected only limited excerpts, and that the result is "misleading." ACC agrees that it would be better if the Board read each

deposition, including Mr. Stockdale's, in its entirety, and then drew its own conclusions about the various topics discussed. In this particular instance, Mr. Stockdale's testimony reflects that, while he was removed to some extent by Ecology management from pressure coming from the Port and the Governor's office, he was well aware that such pressure was being placed on the managers who actually had responsibility for making the 401 decision. The Board should review this testimony in its entirety and draw its own conclusions.

- 129:17 130:9 Having just objected that ACC has selected out portions of Mr. Stockdale's testimony, Ecology then demands, on grounds of relevance, that Mr. Stockdale's testimony describing a specific incident of direct pressure upon him from the Governor's office be deleted. Particularly in light of Ecology's claims (including in its objections to portions of the deposition testimony noted above), there is no basis for deleting from the Board's review Mr. Stockdale's striking description of an incident in which he acknowledged that he had a meeting with the Port, and before he even got back to his office (within 20 minutes), the Port had called the Governor's office, which had called Gordon White, the Ecology manager who ultimately signed the 401.
- 135:23 136:25 Ecology repeatedly stated to the Board during the trial that it had put together the best possible team of experts (including on wetlands) for its 401 decision. The testimony to which Ecology objects is directly relevant to this claim. It reflects that, in fact, Dyanne Sheldon (who ultimately was retained by ACC) was Mr. Stockdale's choice as Ecology's outside wetlands expert to review the Port's 401 application, but that that choice drew objections to the Governor's office from the Port.
- 138:23 148:11 Same response as immediately above: the withdrawn question which Ecology notes has no substance or substantial bearing on the relevance of the subsequent testimony given in response to a different question.
- 175:23 181:13 This "relevance" objection mischaracterizes the testimony and the nature of the discussion with Mr. Stockdale. The point, once again, of the testimony both before the Board and in this deposition is that Ecology originally told the Port that Vacca Farm was already a wetland (regardless of

how it was classified by the Army Corps as a result of the Food Security Act), and that Ecology could not give credit under state law for restoration of Vacca Farm because it was an existing wetland. The status of Vacca Farm as an existing wetland with viable functions was confirmed by Dr. James Kelley in his testimony before King County Superior Court. It is very relevant for the Board to know that Ecology was well aware of this dichotomy and, in fact, as Mr. Stockdale conceded in his deposition testimony, believed that it was “funny” (dep. p. 177) how the Port had made contradictory arguments. Ecology cannot assert to the Board that its wetland mitigation is unprecedented and more than compliant with water quality standards while at the same time seeking to suppress testimony by Ecology’s own wetlands expert which tells a different story. *See also* dep. p. 52 (acknowledgement by Stockdale that Ecology gave Port credit for preserving wetlands whose preservation is already required under state and federal law).

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Erik Stockdale

January 23, 2002

ACC v. DOE

01-160

CONDENSED TRANSCRIPT AND CONCORDANCE
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AR 028855

JAN 30 2002

1 POLLUTION CONTROL HEARINGS BOARD
 2 STATE OF WASHINGTON

3 AIRPORT COMMUNITIES COALITION,)
 4 Appellant,)
 5 vs.) PCHB NO. 01-160
 6 DEPARTMENT OF ECOLOGY and the)
 7 PORT OF SEATTLE,)
 8 Respondent.)

9 DEPOSITION UPON ORAL EXAMINATION
 10 OF
 11 ERIK STOCKDALE

12 10:02 A.M.
 13 JANUARY 23, 2002
 14 1325 FOURTH AVENUE, SUITE 1500
 15 SEATTLE, WASHINGTON

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23
24 MARY L. GREEN, CCR, RPR
 25 CSR NO. GREENML497RZ

JAN 30 2002

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23
24
25

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 11 Miller Creek Basin

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 16 Bird strike hazard monitoring at
 17 SeaTac

18 177. E-mail to Tom Luster from Erik Stockdale 84
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21 178. E-mail to Tom Luster from Erik Stockdale 88
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1 183. E-mail to Tom Luster from Erik Stockdale 111
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4 184. E-mail to Erik Stockdale from Tom Luster 112
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1 SEATTLE, WASHINGTON; WEDNESDAY, JANUARY 23, 2002
2 10:02 A.M.
3 --oOo--

4
5 ERIK STOCKDALE
6 sworn as a witness by the Notary Public,
7 testified as follows:

8
9 EXAMINATION

10 BY MR. EGLICK:

11 Q. Could you state your full name and your
12 address for the record, please.

13 A. My name is Erik Stockdale. I work for the
14 Department of Ecology at 3190 - 160th Avenue Southeast
15 in Bellevue, and the zip is 98008.

16 Q. Mr. Stockdale, I'm Peter Eglick. I'm one of
17 the attorneys for the Airport Communities Coalition,
18 and I'm going to be taking your deposition this
19 morning. Have you ever had your deposition taken
20 before?

21 A. Yes.

22 Q. In connection with the third runway, have you
23 ever had your deposition taken before?

24 A. No.

25 Q. And you understand that I'll be asking

1 questions and you'll be answering them under oath?

2 A. Yes.

3 Q. And if you don't understand a question, let
4 me know so that I can make it more understandable to
5 you?

6 A. Yes.

7 Q. When was the last time you had your
8 deposition taken?

9 A. I think it's been a couple of years, two and
10 a half years perhaps.

11 Q. And in what case?

12 A. It was a tort claim against ecology and the
13 State of Washington.

14 Q. Involving wetlands?

15 A. Yes.

16 Q. And who brought the claim?

17 A. It was brought against H. A. Bredberg and
18 Dick Harriman. They were the plaintiffs.

19 Q. And what was the subject of the claim?

20 A. The subject was their claim that ecology had
21 damaged their reputation, I believe.

22 Q. In what way?

23 A. I would have to read their claim again to
24 fully answer that. Essentially they felt that a letter
25 that the regional director of ecology wrote to them

1 complaining about their physical aggression in the
2 field constituted a damage to their reputation.

3 Q. And who was the regional director?

4 A. Mike Rundlett.

5 Q. And had you been a witness to physical
6 aggression in the field?

7 A. I was the subject of the physical aggression,
8 yes.

9 Q. Have you ever testified in any case, whether
10 by deposition or at trial, concerning the third runway?

11 A. No.

12 Q. Have you ever testified concerning any
13 property which the port has or will acquire in
14 connection with the third runway?

15 A. Can you clarify what you mean by testifying?

16 Q. Provide testimony under oath in any form.

17 A. No.

18 Q. Have you ever consulted in any case
19 concerning property which the port has or will acquire
20 for the third runway?

21 A. I guess I'd have to ask you what you mean by
22 consult.

23 Q. Provide comments.

24 A. I was asked by Kevin Featherston to write a
25 letter to it was either him or his client regarding a

1 piece of property adjacent to the Vacca Farm that was
2 being condemned by the port.

3 Q. And who was Kevin Featherston representing?

4 A. I believe he was representing Novadyne
5 Engineering, who I believe was his client in the case.

6 Q. Novadyne Engineering owned the property in
7 question?

8 A. No. I don't believe so.

9 Q. Who owned the property in question?

10 A. I'm not sure.

11 Q. Was Novadyne Engineering retained by a law
12 firm in the case to which you're referring?

13 A. I imagine they were.

14 Q. Do you know?

15 A. No, I don't.

16 Q. Did you ever consult with anyone affiliated
17 with the port concerning the condemnation case that
18 you've just referred to?

19 A. No. I don't believe so.

20 Q. No advice or comments to anyone concerning
21 port condemnation of Vacca Farm or adjacent property?

22 A. Other than that letter, I don't believe so,
23 no.

24 Q. No conversations?

25 A. I spoke with -- I believe I spoke with

1 Mr. Kelley about that property at one point in time,
2 but I believe that's the limit.

3 Q. Mr. Kelley you haven't mentioned before, so
4 maybe you can explain who Mr. Kelley is.

5 A. Mr. Jim Kelley is the port's wetland
6 biologist.

7 Q. Now, why were you speaking to the port's
8 wetland biologist concerning that property?

9 A. I was asked by Mr. Featherston to -- I'm
10 trying to recall the issue, but it had to do with the
11 status of wetlands on the property. There was some
12 question about whether or not a delineation had been
13 done on the property, and if I recall correctly, I
14 asked Mr. Kelley if he had conducted a delineation on
15 the property.

16 Q. Did you discuss information which would
17 assist the port in reducing the valuation of the
18 property for condemnation purposes?

19 A. I don't know how that information was used.
20 The question that was raised or asked of me -- and I
21 believe the letter summarizes what my analysis was, but
22 it had to do with the question of the extent of
23 wetlands on that property.

24 Q. You weren't concerned with the issue of
25 valuation?

1 A. No.

2 Q. And you didn't have any information on the
3 issue of valuation?

4 A. No.

5 Q. And you weren't aware that valuation was what
6 the port was concerned about?

7 A. I imagine that that's what the condemnation
8 issue was about.

9 Q. I'm asking whether you were aware that
10 valuation was what the port was concerned about.

11 A. Yes.

12 Q. Did you provide information that would assist
13 the port in reducing the valuation of the property in
14 question?

15 A. I provided information that addressed the
16 regulatory status of the wetlands on the property.

17 Q. And was that part of your third runway
18 project activities?

19 A. It was related to the third runway project,
20 but it wasn't a task that was directly related to the
21 401.

22 Q. Did someone give you instructions to consult
23 with port representatives concerning matters relating
24 to their condemnation case?

25 MR. PEARCE: Objection; mischaracterizes

1 earlier testimony.

2 A. Did somebody -- what do you mean by somebody?

3 Q. (BY MR. EGLICK) Anyone.

4 A. I was asked by Mr. Featherston to respond to
5 the questions that he asked me.

6 Q. And you said to write a letter; is that
7 right?

8 A. That's correct.

9 Q. Did you follow the condemnation case in
10 question in terms of its outcome?

11 A. I believe I was contacted by an attorney -- I
12 don't know who she worked for, though -- and she sent
13 me -- I did receive a transcript of some hearings, but
14 I don't recall. But did I follow it? I don't
15 understand what you mean by follow it.

16 Q. Did you try to keep abreast of the outcome of
17 the case?

18 A. I don't believe so.

19 Q. So that wasn't a matter of any comment by
20 you; the outcome of the case, that is?

21 A. I don't recall, no.

22 Q. How many times have you been on the third
23 runway site?

24 A. Several dozen times.

25 Q. When was the last time?

1 A. I believe it was last summer.

2 Q. June?

3 A. I don't recall which month.

4 Q. When you say last summer, you mean the summer
5 of 2001?

6 A. Yes.

7 Q. Well, was it before the first 401 decision
8 came out?

9 A. It was before the first 401 -- I don't
10 actually remember when the 401 decision came out.

11 Q. August 10.

12 A. August 10. Yes. I believe so.

13 Q. Was it in August?

14 A. I don't recall which month.

15 Q. How did you happen to be out there?

16 A. We had a site visit with the assistant -- the
17 new assistant director for ecology.

18 Q. And who was that? You don't know who the new
19 assistant director of ecology is?

20 A. I do, but I'm trying to remember her name.

21 Q. I guess it wasn't a very memorable meeting,
22 huh?

23 A. I didn't say that.

24 Q. Well, can you remember her name?

25 A. Linda Hoffman.

1 Q. And who else was at the site visit?
 2 A. Ray Hellwig, Kevin Fitzpatrick. There were
 3 several other people. I don't recall who they were.
 4 There were a couple of people from the port.
 5 Q. Ann Kenny?
 6 A. I'm not sure if Ann was there or not.
 7 Q. Katie Walter?
 8 A. No. I don't believe Katie was there.
 9 Q. What was the purpose of the visit?
 10 A. The purpose of the visit was to familiarize
 11 Ms. Hoffman with the project.
 12 Q. Where did you go?
 13 A. We went to the -- there's a port trailer that
 14 -- office trailer that is on the west side. There's a
 15 new area that they've prepared a large trailer complex.
 16 We started there. We drove down, drove through the
 17 buy-out area. I believe we also drove down to the golf
 18 course area.
 19 Q. Anywhere else?
 20 A. I don't think so.
 21 Q. Now, you mentioned a port trailer area. What
 22 do you mean by trailer?
 23 A. Well, there is a mobile structure that is
 24 being used for office space. It's like a construction
 25 oversight type building. It's not a permanent

1 structure.
 2 Q. And there's this one trailer in this area
 3 that you saw?
 4 A. I don't know if there are a couple of
 5 trailers that were hooked together or not. I don't
 6 remember.
 7 Q. Is there a parking area?
 8 A. Yes.
 9 Q. And where is it again?
 10 A. It's in the buy-out area on a slope above
 11 Miller Creek.
 12 Q. Are there any other places that you visited
 13 on your site visit other than what you just described?
 14 A. Well, I described the Miller Creek area, the
 15 buy-out area, and the golf course area.
 16 Q. Anything else?
 17 A. I don't believe so, no.
 18 Q. Did you see any signs of activity related to
 19 construction on that site visit?
 20 A. Yes.
 21 Q. What did you see?
 22 A. We looked at one of the stormwater management
 23 treatment ponds that was installed and in place.
 24 Q. Do you know which one?
 25 A. No, I don't.

1 Q. And when you say was installed, do you mean
 2 it had recently been installed?
 3 A. No. It's been there. I don't know when it
 4 was installed.
 5 Q. I asked whether you saw any signs of
 6 construction activity, and your response referred to
 7 this pond, so I'm wondering what the connection is.
 8 A. Well, the stormwater pond, the treatment
 9 system that is in place is being used to treat the
 10 run-off from the embankment construction that is being
 11 carried out on the port property.
 12 Q. And you saw embankment construction underway?
 13 A. Yes.
 14 Q. What did you see?
 15 A. Well, there's heavy equipment moving dirt and
 16 depositing dirt.
 17 Q. When you say heavy equipment, what do you
 18 mean?
 19 A. Tractor trailers.
 20 Q. More than one?
 21 A. A couple. I don't remember how many.
 22 Q. And you say they're used for embankment
 23 construction. How could you tell it was being used for
 24 embankment construction?
 25 A. Because you can see where they're depositing

1 material and laying it down.
 2 Q. By material, you mean fill dirt?
 3 A. Correct.
 4 Q. And where are they getting the fill dirt from
 5 if you saw?
 6 A. I did not see where they were getting the
 7 fill dirt from.
 8 Q. But you saw it being deposited; is that
 9 correct?
 10 A. I believe so, yeah.
 11 Q. What areas did you see it being deposited in?
 12 A. In one of -- there's an area that is east of
 13 the 12th Avenue or I believe a couple of areas where
 14 material is being laid down.
 15 Q. What are they?
 16 MS. MARCHIORO: Objection; vague.
 17 A. Can you be more specific?
 18 Q. (BY MR. EGLICK) Yes. What are the couple of
 19 areas that you testified were where material was being
 20 laid down? Can you name them?
 21 A. No. I cannot name them.
 22 Q. Can you identify them geographically?
 23 A. Probably.
 24 Q. Go ahead.
 25 A. I would need some more information or I would

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1 need a map to be able to do that.
 2 Q. You can't describe them verbally? East or
 3 west, north or south of some particular point?
 4 A. I said east and upslope of the 12th Avenue.
 5 Q. What other signs of construction activity did
 6 you see?
 7 A. We noted that some of the homes in the
 8 buy-out area had been removed, driveways removed,
 9 garbage removed, foundations removed. There was orange
 10 netting erected. Some of the area -- well, much of the
 11 area is fenced off.
 12 Q. Any other signs of construction activity that
 13 you saw?
 14 A. I don't recall anything else at this point.
 15 Q. Now, did you sign any document releases,
 16 anything of that sort in order to get access to the
 17 site?
 18 A. I don't believe so.
 19 Q. Were there any areas you wanted to see that
 20 you weren't allowed to look at?
 21 A. No.
 22 Q. Do you know Tom Luster?
 23 A. Yes.
 24 Q. How do you know him?
 25 A. I used to work with Tom at the Department of

1 Ecology.
 2 Q. And what was his position?
 3 A. Tom was a federal permit coordinator.
 4 Q. And how did you work with him?
 5 A. I worked on -- I worked on various projects
 6 with Tom that required a 401 certification.
 7 Q. What were they?
 8 A. Well, I don't recall all the projects, but I
 9 worked on the third runway project, the Willows Run
 10 golf course, several road projects in the King County
 11 area. Those are the ones that come to mind right now.
 12 Q. Did you work with him on the -- are you
 13 familiar with the Battle Mountain Gold application?
 14 A. No, I did not.
 15 Q. You're familiar with what it is, though?
 16 A. Yes.
 17 Q. And why is it that you didn't work with him
 18 on that?
 19 A. That's in eastern Washington.
 20 Q. Well, why would he be working on a project in
 21 eastern Washington and you're making it sound as if you
 22 wouldn't be? Why is that?
 23 A. The geographic area that I'm assigned to
 24 includes King, Kitsap, Snohomish, Skagit, San Juan
 25 Island, and Whatcom County. It's the seven counties in

19

1 the northwest region.
 2 Q. And what was his assignment? Wasn't it the
 3 same?
 4 A. No.
 5 Q. How so?
 6 A. Tom's assignments were not geographically
 7 based as far as I know the way mine are.
 8 Q. In other words, he had statewide
 9 responsibilities?
 10 A. When he became the lead 401 coordinator, his
 11 responsibilities, I think, were more statewide.
 12 Q. What does the lead 401 coordinator mean? Is
 13 that a DCE term? Why don't you explain to me what you
 14 mean by lead 401 coordinator.
 15 A. I believe Tom -- when Tom left ecology, he
 16 was the senior 401 coordinator at ecology.
 17 Q. For the whole state?
 18 A. For the state.
 19 Q. Now, are you a member of the Society of
 20 Wetland Scientists?
 21 A. I am.
 22 Q. And do you know whether Mr. Luster is?
 23 A. I believe he was.
 24 Q. Well, you say was. Do you have any reason to
 25 believe he isn't anymore?

20

1 A. No.
 2 Q. And what does that entail in terms of getting
 3 in?
 4 A. Paying \$50 a year.
 5 Q. That's it?
 6 A. Uh-huh.
 7 Q. So anyone can join? I could join the Society
 8 of Wetland Scientists if I paid \$50 a year?
 9 A. You could.
 10 Q. And there are no requirements for training or
 11 credentials?
 12 A. Not to become a member of the society. There
 13 are to become certified.
 14 Q. What's necessary to become certified?
 15 A. I would have to look at the application to
 16 answer that accurately.
 17 Q. Well, you were on the board of the society a
 18 number of years, weren't you?
 19 A. I was.
 20 Q. Do you have a general idea of what's
 21 necessary to become certified?
 22 A. You need a background in one of the
 23 biological or physical sciences that are listed in the
 24 application. There's, I believe, a minimum of five
 25 years of working experience as a wetland professional

1 in the field to be certified.
 2 Q. Now, what did you understand Tom Luster's
 3 role was with regard to the -- I believe you said you
 4 worked with him on the airport 401; is that right?
 5 A. That's correct.
 6 Q. What did you understand his role was?
 7 A. Tom's role in the airport project or any
 8 other project that requires an individual 401 is to
 9 work with the wetlands specialist and the other
 10 technical staff that are working on that project.
 11 Q. And do what?
 12 A. Well, it depends on which project, but
 13 generally speaking, Tom's responsibility is to write
 14 the permit decision that is based on the assessment
 15 made by the technical staff who are involved in the
 16 project.
 17 Q. And was it your understanding that Tom's role
 18 involved exercising some professional judgment himself?
 19 A. Yes. That fall within the scope of his
 20 responsibilities, sure.
 21 Q. What would be within the scope of his
 22 responsibilities to your understanding?
 23 A. Well, Tom's role in terms of administering
 24 the state-delegated authority under the Clean Water Act
 25 was to ensure that the subject property or project

1 meets state water quality standards.
 2 Q. Have you talked with Tom Luster recently?
 3 A. No.
 4 Q. When was the last time you talked with him?
 5 A. Last June.
 6 Q. How did you prepare if you did for having
 7 your deposition taken here today?
 8 A. I spoke with my attorney, and I attended a
 9 deposition training that she put on.
 10 Q. And that's Joan Marchioro?
 11 A. That's correct.
 12 Q. Did you do anything else?
 13 A. I reread the prefile -- not prefile testimony
 14 -- the documents associated with this project again.
 15 What do you call them? They're not depositions, but
 16 the motions, I guess. Those are the documents that I
 17 looked at.
 18 Q. And did you talk to anyone else other than
 19 your attorney about your deposition?
 20 A. No.
 21 Q. Or anything related to preparation for your
 22 deposition?
 23 A. No.
 24 Q. Talk to Katie Walter?
 25 A. No, I didn't.

1 Q. Or review Katie Walter's deposition
 2 testimony?
 3 A. I read through it, yes.
 4 Q. Did you think that was part of the stay
 5 motion documents?
 6 A. Those are the documents I was referring to,
 7 yes.
 8 Q. Well, let me clarify, then. Katie Walter
 9 submitted what would be known as an affidavit or a
 10 declaration. That's a sworn statement when we were
 11 asking the PCHB for a stay. Is that what you read?
 12 A. Yes.
 13 Q. Did you read the transcript of her deposition
 14 which took place last week?
 15 A. No.
 16 Q. I wanted to clarify that.
 17 A. Oh, no. I'm sorry.
 18 Q. There's a difference, in other words, between
 19 a deposition, which is what we're doing here today, and
 20 a declaration.
 21 A. No.
 22 Q. Am I clearer now?
 23 A. Yes.
 24 Q. That's a good transition into what I'm going
 25 to hand out as an exhibit, your declaration.

1 (Deposition Exhibit No. 172 was marked for
 2 identification.)
 3 Q. (BY MR. EGLICK) Showing you what has been
 4 marked as Exhibit 172 to your deposition. Can you
 5 identify it?
 6 A. Yes. This is my declaration.
 7 Q. That you submitted to the Pollution Control
 8 Hearings Board in this case in opposition to a stay?
 9 A. Yes.
 10 Q. Did you write it?
 11 A. I did.
 12 Q. And did you consult with anyone in writing
 13 it?
 14 A. I consulted with my attorney.
 15 Q. Anyone else?
 16 A. I spoke with Katie Walter.
 17 Q. Anyone else?
 18 A. I believe that's all.
 19 Q. Now, looking on page 3 of your deposition.
 20 Do you see you've got a footnote there referring to a
 21 publication?
 22 A. Yes.
 23 Q. And the two editors of the publication are
 24 who?
 25 A. Amanda Azous and Rich Horner.

1 Q. That's Amanda A-z-o-u-s, correct?
 2 A. Yes.
 3 Q. And Horner, H-o-r-n-e-r?
 4 A. Correct.
 5 Q. And who are they? Do you know them?
 6 A. Yes, I do.
 7 Q. Who are they?
 8 A. Well, Amanda Azous is present here today.
 9 Q. What do you know about her?
 10 A. I've known Amanda for 15 years.
 11 Q. Is she a wetlands expert?
 12 A. Yes, she is.
 13 Q. And Rich Horner --
 14 A. Rich Horner is a professor at the university.
 15 Q. I take it from your declaration that you
 16 worked on this project on which they published this
 17 final report?
 18 A. Yes.
 19 Q. What's a ratio zombie, Mr. Stockdale?
 20 A. I refer to that in paragraph 13 of my
 21 declaration.
 22 Q. Right.
 23 A. By that, the context of that was a discussion
 24 noting that we at ecology use ratios as guidelines to
 25 evaluate the adequacy of a mitigation project. By

1 ratio zombie, what I mean by that is and I quote that
 2 it's not -- it's important not to become a ratio
 3 zombie. It's important not to be totally or too
 4 focused on the ratio, because it's more important to
 5 look at the functions that are being evaluated in the
 6 project. You use the ratios as a guideline. You don't
 7 use them as the only decision-making tool.
 8 Q. Now, have you read the Pollution Control
 9 Hearings Board decision granting a stay in this case?
 10 A. Yes.
 11 Q. And are you familiar with its analysis on
 12 wetlands?
 13 A. I did read it, yes.
 14 Q. Did you think that that decision reflected a
 15 ratio zombie approach as you use the term?
 16 A. I would have to reread that, but it's not
 17 what comes to mind, no.
 18 (Deposition Exhibit No. 173 was marked for
 19 identification.)
 20 Q. (BY MR. EGLICK) Showing you what has been
 21 marked as Exhibit 173 to your deposition. Can you
 22 identify it?
 23 A. This is an e-mail that I sent to Tom Luster
 24 and Ray Hellwig on February 17, year 2000.
 25 Q. And this is summarizing a meeting that you

1 had with who?
 2 A. With Jim Kelley.
 3 Q. And would it be accurate to characterize this
 4 memo as setting out your position on various issues
 5 relating to wetlands and the third runway project as a
 6 result of that meeting? Take a minute and look at it.
 7 MR. EGLICK: Since the witness is taking a
 8 few minutes to read it, why don't we go off the record.
 9 (Discussion off the record.)
 10 A. Can you restate your question, please?
 11 Q. (BY MR. EGLICK) Why don't we have the
 12 reporter read it back.
 13 (The reporter read back as requested.)
 14 A. Can you define position?
 15 Q. (BY MR. EGLICK) What do you think position
 16 means?
 17 A. I'm asking you to clarify for me what you
 18 mean by my position.
 19 Q. I'm asking you what your understanding of the
 20 word position is, and since I'm asking the questions,
 21 I'd ask you to answer.
 22 A. I'm looking for clarification on your
 23 question right now.
 24 Q. You're saying that you don't know what the
 25 word position means?

1 A. No.
 2 Q. Since you don't understand what the word
 3 position means, what about your expert opinion, because
 4 I assume that ecology is offering you as an expert of
 5 some sort; is that correct?
 6 A. That is correct.
 7 Q. So assuming that you're an expert as ecology
 8 claims, is it accurate to say that this Exhibit 173 to
 9 your deposition sets out your in ecology's view expert
 10 opinion on issues relating to wetlands and the third
 11 runway as a result of a meeting with Mr. Kelley?
 12 A. That is correct.
 13 Q. Could you look at the third page of Exhibit
 14 173, and could you read that top paragraph on the page
 15 into the record, please?
 16 A. "I told Jim that there is an in-basin
 17 mitigation opportunity Ecology and EPA identified as
 18 desirable to the Port. The Port has, to date, not
 19 considered it. That is the headwater wetland in the
 20 Walker Creek basin. There is an undetermined amount of
 21 fill that can be removed from that wetland. This may
 22 be a mitigation opportunity the Port can purchase to
 23 raise their ratio to 1 to 1. If the PCHB asks me if
 24 the Port pursued all in-basin mitigation opportunities,
 25 I will have to say no."

1 Q. Was this opportunity that you're describing
 2 here ever included as part of the port's plans?
 3 A. No.
 4 Q. So if the PCHB asked you if the port pursued
 5 all in-basin mitigation opportunities, then according
 6 to this memo, you're going to have to say no; is that
 7 correct?
 8 A. That's correct.
 9 Q. And that's still the case today; isn't that
 10 correct?
 11 A. Yes.
 12 Q. Looking down on this page, the third
 13 paragraph down you refer to an HGM-based method for
 14 evaluating wetland function; is that correct?
 15 A. Yes.
 16 Q. What is the HGM method?
 17 A. It is the Washington state wetland function
 18 assessment method.
 19 Q. Who came up with that method if that's the
 20 correct scientific term?
 21 A. The method was developed by a group of
 22 professionals in the northwest, and it was -- the
 23 effort was led by ecology.
 24 Q. And how is that method used?
 25 A. That method is used to assess wetland

1 functions for two classes of wetlands, riverine and
 2 depressional.
 3 Q. Are there any aspects of the port's various
 4 proposals relating to wetlands for the airport where
 5 that method would be apt to apply, a-p-t?
 6 A. It could be used to assess the functions of
 7 the riverine and the depressional wetlands.
 8 Q. So is that answer then a, yes, there are
 9 aspects of the port proposals where this method would
 10 be aptly applied?
 11 A. Yes.
 12 Q. And was it applied to your knowledge?
 13 A. To my knowledge, it was not.
 14 Q. And is this memo to your knowledge the reason
 15 -- expressed to your knowledge the reason why not,
 16 quote, because at the time that the port conducted its
 17 studies, the method was not available?
 18 A. That is correct.
 19 Q. Now, this memo was written in February 2000;
 20 is that correct?
 21 A. That's correct.
 22 Q. And when did the method become available?
 23 A. If I'm not mistaken, it was earlier in 2000
 24 that it was published.
 25 Q. Do you know -- are you familiar with the fact

1 that the port withdrew its 401 application and then
 2 resubmitted it?
 3 A. Yes.
 4 Q. And that occurred, didn't it, in the fall of
 5 2000?
 6 A. I believe so.
 7 Q. And that was after this Exhibit 173 was
 8 written, wasn't it?
 9 A. Yes.
 10 Q. And was there some point at which ecology
 11 considered having the port conduct its analysis
 12 pursuant to this HGM method after February 2000?
 13 A. No.
 14 Q. Now, just so I understand, if you look at
 15 this third paragraph again, the comment that you make
 16 here is, quote, the HGM-based method mentioned by Sarah
 17 -- that's Sarah Cook, isn't it?
 18 A. Yes.
 19 Q. And she was someone -- a wetlands expert who
 20 submitted comments on behalf of Airport Communities
 21 Coalition; is that correct?
 22 A. Yes.
 23 Q. So you're referring to a comment she made; is
 24 that correct?
 25 A. Yes.

1 Q. And she says or you say, quote, the HGM-based
 2 method mentioned by Sarah was just released by ecology.
 3 It was not available at the time that the port
 4 conducted its studies, so the comment is irrelevant,
 5 end quote. So was your point here strictly related to
 6 the timing between the port's studies and the HGM
 7 methods release --
 8 A. Yes.
 9 Q. -- when you use the term "irrelevant"?
 10 A. Yes.
 11 Q. So other than the timing issue, is there some
 12 other question of relevance that you meant to convey in
 13 this memo?
 14 A. I believe -- well, the port had also already
 15 done a function assessment using another method, and
 16 they already issued their report for the function
 17 assessment.
 18 Q. That's a timing issue, correct?
 19 A. They'd already conducted their function
 20 assessment, so, yes, I guess it is a timing issue.
 21 Q. Now, when applications were submitted to
 22 ecology in other areas or other applications that
 23 you're aware of after this HGM method was adopted by
 24 ecology, was that the method that ecology asked to be
 25 used in functional assessments; HGM, that is?

1 A. No.
 2 Q. So what is HGM used in, then?
 3 A. It's used for larger projects.
 4 Q. Let me reword the question, then. When
 5 larger projects came in after the HGM method was
 6 adopted, is that the method that ecology had used for
 7 determining function?
 8 A. I don't know if we've used it yet on any
 9 other project.
 10 Q. Have larger projects of the size of the
 11 airport project -- when you say larger project, what do
 12 you mean?
 13 A. I think of projects like the Auburn racetrack
 14 or large road projects, some of the Sound Transit
 15 projects that are being considered, projects requiring
 16 an individual 404 permit.
 17 Q. Now, what is it about the HGM method that
 18 makes it something that ecology applies to larger
 19 projects?
 20 A. The method applies to projects first of all
 21 where wetland impacts are to those two classes of
 22 wetlands. They don't apply to other -- they don't
 23 apply to sloped wetlands or to estriane wetlands.
 24 Q. Estriane wetlands means as if on the coast
 25 line, something like that?

1 A. Or in inner tidal areas.
 2 Q. Where there's -- would it be accurate to say
 3 where there's some kind of interaction with marine
 4 waters --
 5 A. Yes.
 6 Q. -- salt water?
 7 A. Yes.
 8 Q. Go ahead.
 9 A. I'm trying to recall your question.
 10 Q. Well, the question was what makes it a method
 11 that ecology applies to what you've called larger
 12 projects, and I think you were explaining.
 13 A. The method was intended to be a rapid
 14 assessment method, but the reality is that it's not.
 15 It requires a lot of training to learn how to use it,
 16 and it takes a fair amount of time to apply it.
 17 Q. Now, why does it take a fair amount of time
 18 to apply it?
 19 A. It would take somebody who was new to the
 20 method a lot of time. I imagine that with time
 21 somebody could become more adept at using it, but it's
 22 not a rapid method.
 23 Q. Now, why is it not a rapid method? Does it
 24 require, for example, more data than other methods?
 25 A. Yes.

1 Q. And is there something wrong with it
 2 requiring more data?
 3 A. No.
 4 Q. So it requires a more detailed look at
 5 functions; is that correct?
 6 A. Yes.
 7 Q. Could you look at page 4 of this Exhibit 173?
 8 Do you see I think it's the third paragraph down? It
 9 starts, "I told Jim."
 10 A. Yes.
 11 Q. Could you read that into the record if you
 12 would?
 13 A. "I told Jim we will restrict the use of the
 14 mitigation area so it can't be used for off-site
 15 regional stormwater control. He said the Port expects
 16 this restriction. My understanding is there is
 17 interest in the area to use the site for regional
 18 stormwater storage."
 19 Q. Now, what's that about?
 20 A. This refers to the Auburn wetland mitigation
 21 site.
 22 Q. And you're saying here that there's interest
 23 in the area to use for regional stormwater. What's
 24 that a reference to?
 25 A. I was referring to interest that I had heard

1 on behalf of some developers in the Auburn area who
 2 wanted to use the Auburn mitigation site as a
 3 stormwater detention and treatment facility for their
 4 planned developments.
 5 Q. Now, how did you hear about that?
 6 A. I don't recall specifically when or from who,
 7 but I may have heard it likely from somebody at the
 8 port.
 9 Q. What's the matter, if anything, with using
 10 the mitigation area for stormwater storage?
 11 A. Well, that actually is the question that
 12 started the ten-year wetlands research program was the
 13 whole question of when and if wetlands should or could
 14 be used for stormwater detention and treatment.
 15 Q. Well, let me -- it seems as if you're telling
 16 Mr. Kelley this is not something that you want to see
 17 as a use of the mitigation site; is that correct?
 18 A. That's correct.
 19 Q. So why did you tell him that?
 20 A. Well, I told Mr. Kelley that we were going to
 21 -- in our deliberation we were going to make it clear
 22 that that mitigation site would not be available for
 23 somebody else to use as a stormwater detention and
 24 treatment facility.
 25 Q. Actually, it doesn't say treatment here, does

1 it? It just says storage, doesn't it?
 2 A. It says storage.
 3 Q. So what's the matter with -- why would
 4 ecology insist on not allowing the mitigation site to
 5 be used for stormwater storage? What's the thinking
 6 behind that?
 7 A. The thinking -- well, we have found that
 8 wetlands that are being used to meet detention needs,
 9 the storage function of those wetlands is being
 10 maximized to meet the needs of the development, and
 11 oftentimes that practice results in degradation of the
 12 wetland system.
 13 Q. What do you mean by degradation of the
 14 wetland system?
 15 A. If you take a forested wetland, for example,
 16 and you build an outlet structure or you impound that
 17 forested wetland and use it as a bathtub for
 18 stormwater, you can and often will kill the trees in
 19 the wetland.
 20 Q. Is the Auburn mitigation site forested?
 21 A. Portions of that site are designed to be
 22 forested, yes.
 23 Q. What percentage?
 24 A. Offhand I don't recall, but it's 30 to 50
 25 percent perhaps.

1 Q. And the rest is not forested; is that right?
 2 A. The rest will be scrub, shrub, and emergent
 3 and some open water.
 4 Q. Is the stormwater storage a problem in some
 5 way for the nonforested wetland as well?
 6 A. Yes.
 7 Q. Why?
 8 A. There are specific life cycle requirements
 9 that a lot of species have that can -- that are
 10 affected when wetlands are used for stormwater control.
 11 There are water quality effects. But probably most
 12 importantly is that under state and federal law,
 13 wetlands as waters of the state are not to be used as
 14 water pollution control facilities, so there's a legal
 15 question as well.
 16 MS. MARCHIORO: Why don't we take a break.
 17 MR. EGLICK: Sure.
 18 (Recess taken.)
 19 (Deposition Exhibit No. 174 was marked for
 20 identification.)
 21 Q. (BY MR. EGLICK) Showing you what has been
 22 marked as Exhibit 174 to your deposition,
 23 Mr. Stockdale. Do you recognize it?
 24 A. This looks familiar.
 25 Q. What is it?

1 A. It is a color map of the west side of the
 2 airport, the north end of the airport, primarily the
 3 Miller Creek drainage labeled wetland and stream
 4 impacts in the Miller Creek basin.
 5 Q. Can you show me on here areas that you
 6 observed at your last site visit? What I could do is
 7 give you a red pen, or maybe a blue pen would be better
 8 with which to mark them. How would that be?
 9 A. So what we looked at or where we were?
 10 Q. All of the above.
 11 A. I believe this general area is where the
 12 trailer is.
 13 Q. Why don't you mark that and write the word
 14 "trailer" if you would. You're doing this, are you
 15 not, in blue pen?
 16 A. Blue pen.
 17 Q. Maybe put your initials on there so we'll
 18 know you wrote that on there rather than the map maker.
 19 There you go.
 20 A. (Writing). I do not recall where the
 21 stormwater pond is that we looked at. I mean, I'd be
 22 guessing in trying on this map where it was.
 23 Q. What about the embankment work that you
 24 referred to?
 25 A. Well, again, I would be guessing. I believe

1 it was up in this general area.
 2 Q. Why don't you indicate that general area.
 3 A. (Writing). Again, I could be wrong.
 4 Q. Any other areas where you observed
 5 construction work or where you observed any other
 6 particular place you observed on your site visit?
 7 We're talking about the last one in June of 2001; is
 8 that correct?
 9 A. That's correct. Again, I would be guessing
 10 where -- you know, where along this area.
 11 Q. It looks like you're pointing to places south
 12 of where you just circled and said general embankment.
 13 A. That's correct.
 14 Q. You're saying there's some other areas there,
 15 but you're not exactly sure where?
 16 A. That's correct.
 17 Q. But it's somewhere in the area of the -- I
 18 guess there are a couple of stubs that go out to the
 19 east as you're looking at the map, and you're saying
 20 it's somewhere in the area of those two stubs below
 21 where you marked general embankment fill area; is that
 22 correct?
 23 A. I'm off here. This isn't the third runway.
 24 This is 12th Avenue right here; is that correct? Is
 25 this the second runway here or is this the second

1 runway? See, that's why I'm having a hard time with
2 this map. Unfortunately those features aren't noted on
3 the map.

4 Q. Have you looked at the key at the bottom?

5 A. No. So that would indicate that the orange
6 color is the third runway embankment.

7 Q. Well, let me ask you another question, and
8 maybe you can in a break try to orient yourself on this
9 and I'll come back to it. I don't want to testify for
10 you as to where things are located, but I'll certainly
11 give you a chance to take a look at it and I can ask
12 you some more questions about it. You were referring
13 to Walker Creek headlands before, were you not?

14 A. Headlands?

15 Q. Headwater wetlands or something like that.

16 A. Can you tell me where I referred to that?

17 Q. That is the headwater wetland in the Walker
18 Creek basin.

19 A. Okay.

20 Q. Is that something you can show us its general
21 location?

22 A. Yes. That's wetland 44a.

23 Q. And can you circle that for us?

24 A. (Drawing).

25 Q. And maybe -- thank you -- put your label on

1 it.

2 A. (Writing):

3 Q. We'll come back to that. Could you take a
4 look at page -- we're back to your declaration by the
5 way, which is Exhibit 172. Could you take a look at
6 page 7, paragraph -- actually, page 6, paragraph 15?
7 Do you see that?

8 A. Yes.

9 Q. I notice your first sentence here says that
10 "ecology recognizes that public infrastructure projects
11 may require a unique blend of natural resource
12 mitigation strategies." Do you see that?

13 A. Yes.

14 Q. And then look over if you would on page 7 of
15 your declaration, paragraph 16. You've listed here,
16 haven't you, some objectives that ecology set out in
17 1998 with regard to its review of the third runway
18 project?

19 A. Yes.

20 Q. And see the second bulleted item there?

21 A. Yes.

22 Q. Could you read that into the record, please?

23 A. It says, "Ecology has the responsibility to
24 protect, mitigate for, and restore the water quality,
25 hydrology, food-chain support functions, and aesthetics

1 of the Miller Creek and Des Moines Creek basins, and
2 related sub-basins in and around SeaTac Airport from
3 impacts associated with the Third Runway/Master Plan
4 Improvement project."

5 Q. And could you read the next bulleted item as
6 well, please?

7 A. "Ecology's responsibilities are linked to
8 insure the protection of all beneficial uses in
9 receiving waters including water quality, water
10 quantity and fish."

11 Q. Now, those are -- if you know, those are
12 based on the state water quality standards, aren't
13 they, that ecology is supposed to enforce under the 401
14 program?

15 A. Yes.

16 Q. Is there a state water quality standard that
17 provides some different approach for public
18 infrastructure projects?

19 A. Is there a water quality standard?

20 Q. Is there a state water quality standard that
21 provides a different approach for public infrastructure
22 projects?

23 MR. PEARCE: Objection; calls for a legal
24 conclusion.

25 Q. (BY MR. EGLICK) To your knowledge.

1 A. No.

2 Q. So if you could look back at page 6,
3 paragraph 15, where you're saying, "Ecology recognizes
4 that public infrastructure projects may require" and so
5 on.

6 A. Uh-huh.

7 Q. Let's talk about that for a moment. What's a
8 public infrastructure project?

9 A. A public infrastructure project would include
10 an airport or an essential public facility like a
11 highway, perhaps a wastewater treatment plant.

12 Q. And are you basing that on a definition or is
13 that a term you came up with yourself for your
14 declaration?

15 A. No. I believe the Growth Management Act
16 defines what an essential public facility is.

17 Q. Well, I'm asking you about your definition of
18 public infrastructure project. Did you come up with
19 the definition of public infrastructure project on your
20 own or is there some regulation someplace that defines
21 public infrastructure project for you?

22 A. No. Perhaps I should have used essential
23 public facility instead of public infrastructure
24 project to be more clear.

25 Q. So then public infrastructure project is not

1 something that you're aware is defined anywhere in any
2 particular way?

3 A. No. Not that I'm aware of.

4 Q. Is there something that -- let me start over.

5 A public infrastructure project is then one
6 sponsored, for example, by a government; is that
7 correct?

8 A. Yes.

9 Q. Is this sentence, this first sentence of
10 paragraph 15 of your declaration, saying that things
11 that would not be acceptable for a privately sponsored
12 project are acceptable for a publicly sponsored
13 project?

14 A. State law RCW 90.74 says that.

15 Q. So your answer to that question is yes?

16 A. Yes.

17 Q. And your authority for it is state law 90.74?

18 A. Correct.

19 Q. So your testimony is that in preparing this
20 declaration and describing the way that you looked at
21 the third runway project, it made a difference that
22 this was a public infrastructure project in terms of
23 the evaluation of whether state water quality standards
24 were met?

25 MR. PEARCE: Objection; mischaracterizes the

1 earlier testimony.

2 Q. (BY MR. EGLICK) Well, if it mischaracterizes
3 it, Mr. Stockdale, you can correct me right now.

4 A. I'm trying to follow -- could you please
5 restate your question?

6 MR. EGLICK: Could you read the question?

7 (The reporter read back as requested.)

8 A. Well, state law directs us to consider
9 infrastructure projects and to approach the mitigation
10 strategy differently than we normally do.

11 Q. (BY MR. EGLICK) So if there's a mitigation
12 strategy that doesn't meet the standards of the state
13 water quality standards, you can adopt it if it's a
14 public infrastructure project?

15 MS. MARCHIORO: Objection; calls for a legal
16 conclusion.

17 Q. (BY MR. EGLICK) Was it your understanding
18 that if a mitigation strategy was authorized, for
19 example, under 90.74 -- I assume you're familiar with
20 90.74, aren't you? You cite it in your declaration,
21 don't you?

22 A. Yes.

23 Q. You're very familiar with it, aren't you?

24 A. Yes.

25 Q. So this is not Greek to you in terms of

1 understanding what we're referring to when we say RCW
2 90.74; is that correct?

3 A. That's correct.

4 Q. So when you were applying RCW 90.74 in your
5 review of the third runway project, was it your
6 understanding that 90.74 in any way lowered the bar --
7 do you understand what I mean by lowered the bar?

8 A. Yes.

9 Q. -- on whether water quality standards were
10 met by a public infrastructure project?

11 A. RCW 90.74 does not lower the bar on what
12 standards projects need to meet.

13 Q. So whatever the unique mitigation is or is
14 not for a public infrastructure project -- that's your
15 term -- that mitigation still if you will cut the
16 mustard under the state water quality standards just
17 like any other project; is that correct?

18 A. That's correct.

19 Q. And if a proposal is permitted -- a
20 mitigation proposal is permitted under 90.74 but
21 doesn't meet the state water quality standards in terms
22 of what it accomplishes, then that's not an acceptable
23 proposal; isn't that correct?

24 A. If a project doesn't meet water quality
25 standards, we aren't able to certify it.

1 Q. Regardless of whether the project's
2 mitigation complies with RCW 90.74; isn't that correct?

3 A. That's correct.

4 Q. Let's look at page 8 of your declaration,
5 paragraph 18. You've got this -- what would you call
6 this? A matrix? A chart?

7 A. Yes.

8 Q. Which would you call it?

9 A. A table.

10 Q. We've got this table entitled Compensatory
11 Mitigation. Do you see that?

12 A. Yes.

13 Q. And for in-basin mitigation, you've got a
14 number of values listed under five categories. Do you
15 see that?

16 A. Yes.

17 Q. For a total of 102.27 acres; is that right?

18 A. That's correct.

19 Q. Now, I just want to go over these numbers and
20 understand what they mean to you. Wetland creation,
21 there's a zero for in-basin mitigation; is that right?

22 A. That's correct.

23 Q. So that means no wetlands are being created
24 in the in-basin area; is that right?

25 A. That's correct.

1 Q. Now, there are wetlands being created in
 2 Auburn, aren't there?
 3 A. Yes.
 4 Q. So why aren't they counted here?
 5 A. They are being counted here.
 6 Q. Well, not under in-basin, are they?
 7 A. They're being counted in the out-of-basin
 8 mitigation.
 9 Q. And what's the difference?
 10 A. The difference is that the Auburn site is not
 11 in the Miller Creek or the Des Moines Creek basin.
 12 Q. So it's not in the impacted basins; is that
 13 correct?
 14 A. Correct.
 15 Q. Now, you have under wetland restoration here
 16 6.6 acres for in-basin mitigation; is that correct?
 17 A. Correct.
 18 Q. Now, what is that -- first of all, what's
 19 being done by the port for the 6.6 acres of credit?
 20 A. Of restoration?
 21 Q. Yes.
 22 A. I believe all of that is at the Vacca Farm
 23 area where in part some fill is being removed from part
 24 of the Vacca Farm property that is east or sort of
 25 southeast of the current alignment of the creek, so

1 that part of the former wetland is being restored, and
 2 there are also -- the Vacca Farm wetland or former
 3 wetland, the drained wetland, is being restored. The
 4 drain tiles are being removed. I believe that's the
 5 primary locations of that acreage.
 6 Q. Of the 6.6 acres?
 7 A. That's right.
 8 Q. Now, so would this 6.6 -- is that the kind of
 9 thing you were talking about doing at the Walker Creek
 10 head -- what was that term again?
 11 A. The Walker Creek headwater wetland.
 12 Q. Headwater wetland. Is that the same kind of
 13 thing you were talking about doing there?
 14 A. If the -- I haven't done an assessment of
 15 what is possible there, but there is an area there that
 16 is fill in the wetland, so if that fill is removed and
 17 the hydrology in the soils are restored, then that
 18 would qualify as wetland restoration.
 19 Q. And then you have here wetland enhancement,
 20 21.46; is that right?
 21 A. That's correct.
 22 Q. What's enhancement, wetland enhancement?
 23 A. Enhancement is a mitigation activity where an
 24 existing wetland is -- I don't want to use the word
 25 restored, because I'm going to confuse you -- the

1 existing wetland is improved if you will. The
 2 difference between wetland restoration and wetland
 3 enhancement primarily is where you're restoring an area
 4 that once was a wetland versus wetland enhancement is
 5 where the activity is taking place in an existing
 6 wetland.
 7 Q. So what is -- this 21.46 you cite here, what
 8 is -- what activities are being counted as wetland
 9 enhancement to get to this 21.46 value?
 10 A. Well, for example, part of the fairways at
 11 the golf course are currently wetland, but they're
 12 highly degraded wetland, and the fairway is being
 13 decommissioned or returned back to a more naturally
 14 vegetated plant community, so in those areas, the plant
 15 communities are being restored.
 16 Q. In an existing wetland?
 17 A. In an existing wetland.
 18 Q. And then you've got a category of 23.55
 19 wetland preservation.
 20 A. That's correct.
 21 Q. Now, what's that mean? Not 23.55. What's
 22 wetland preservation mean?
 23 A. Wetland preservation is mitigation credit
 24 that is given for a project when as part of the
 25 mitigation package wetlands are -- existing high

1 quality wetlands are incorporated into the mitigation
 2 package, and in some circumstances, we give mitigation
 3 credit for that at a reduced ratio.
 4 Q. Let me understand something here. Wetlands
 5 are protected under both state and federal law, aren't
 6 they?
 7 A. Yes.
 8 Q. And particularly if it's a significant
 9 wetland, you're really not allowed to go in and alter
 10 or destroy it anyway, are you?
 11 A. In most circumstances, yes.
 12 Q. But this -- I'm using your numbers for a
 13 moment, and we may have to talk about that later, but
 14 your chart here is saying the port is getting
 15 recognition if you will of 23.55 acres for preserving
 16 that which must be preserved anyway? Am I
 17 understanding what you're saying?
 18 A. Now, when you talk about getting credit, you
 19 have to drop down to the last row in the table when
 20 looking at mitigation credit. It's really a small part
 21 of the overall mitigation package.
 22 Q. Well, whatever part it is, is my
 23 understanding that I conveyed to you in my question
 24 correct as to what's occurring?
 25 A. That's correct.

1 Q. Kind of like -- never mind. Strike that.
 2 Then you've got a number here that says
 3 upland buffer enhancement. Do you see that?
 4 A. Yes.
 5 Q. By the way, are you sure all that 21.46 that
 6 you're saying is wetland enhancement -- are you sure
 7 none of that's in the uplands either?
 8 A. As far as I know, that acreage includes
 9 wetlands that have been delineated and verified as
 10 wetlands.
 11 Q. Where are the 23 acres located that we talked
 12 about as wetland preservation? Do you know that?
 13 A. I believe most of that acreage is in the Des
 14 Moines Creek basin.
 15 Q. Do you know where?
 16 A. I believe it's in the borrow site areas.
 17 Q. Do you know what future plans the port has
 18 for that area that you're referring to?
 19 A. No, I don't.
 20 Q. So what's the mechanism for preserving this
 21 area into the future?
 22 A. The mechanism is that the area is set aside
 23 in the conservation easement or with a deed
 24 restriction.
 25 Q. And do you know whether the entire area

1 that's referred to in the 23 acres has been set aside
 2 in that way?
 3 A. Has been set aside currently?
 4 Q. Yeah. As part of the 401.
 5 A. I believe that it has been, yes.
 6 Q. And that's already occurred. Is that your
 7 testimony?
 8 A. I don't believe it has occurred. It's part
 9 of the mitigation package that's been committed to.
 10 Q. But at the time of the issuance of the 401,
 11 had it occurred or not?
 12 A. No.
 13 Q. And has it occurred since?
 14 A. None of this has occurred.
 15 Q. I understand construction hasn't occurred
 16 because there's a stay among other things or shouldn't
 17 have occurred, I guess would be a better way of putting
 18 it. Would you agree with that?
 19 A. Right.
 20 Q. But with regard to the requirement for
 21 preservation and the mechanism that you're saying is
 22 going to make that so, it's your testimony that that
 23 has not yet occurred; is that correct?
 24 A. As far as I know, no.
 25 Q. Looking back at upland buffer enhancement.

1 What's upland? What does that mean?
 2 A. Not wetland.
 3 Q. And what's buffer?
 4 A. Well, buffer is defined as a protected zone
 5 adjacent in this case to a wetland or stream complex.
 6 Q. And what's enhancement again?
 7 A. In terms of upland buffer enhancement?
 8 Q. Yeah.
 9 A. In this case, there is a hundred-foot buffer
 10 on either side of Miller Creek that will be enhanced or
 11 revegetated and protected as a buffer for Miller Creek.
 12 Q. So the buffer is required in any event, is it
 13 not?
 14 A. We do require buffers on wetland mitigation
 15 sites.
 16 Q. So it would have been required regardless of
 17 the enhancement? The buffer was already a requirement;
 18 is that correct?
 19 A. No.
 20 Q. In other words, consistent with state water
 21 quality standards, ecology would have issued a 401
 22 without requiring buffers in that location?
 23 A. Depending on what the activity is, we may or
 24 may not have required -- well, for example, if the
 25 impact -- if the only wetland mitigation activity that

1 was determined to be required for this project was at
 2 the Vacca Farm, we would have required a buffer around
 3 the Vacca Farm wetland. That would have been the
 4 buffer.
 5 Q. Is there any distinction between requiring a
 6 buffer and requiring buffer enhancement?
 7 A. Yes.
 8 Q. What's the distinction?
 9 A. Well, the distinctions are numerous, and they
 10 depend on the site-specific situation.
 11 Q. Is it your testimony, then, that when a
 12 buffer is required, it's typically without regard to
 13 the condition that the buffer will be left in?
 14 A. That depends on a specific situation.
 15 Q. Well, is it your testimony that in some
 16 situations when a buffer is required, part of the
 17 requirement of the buffer itself is a specific
 18 condition that the buffer will be left in?
 19 A. Yes.
 20 Q. In this case, if I'm understanding correctly,
 21 the idea of the buffer has been separated from the idea
 22 of what its condition will be; is that correct?
 23 A. I'm not sure I follow that question.
 24 Q. And maybe I'm not following the theory of
 25 wetlands here, but let me try to ask it another way.

1 Upland buffer enhancement, which is getting 50.66 acres
2 allocated to it on your table here -- do you see that?

3 A. Yes.

4 Q. That is saying we have a buffer that we've
5 already said must exist, and now we're going to require
6 that enhancement of that buffer occur and then give
7 some level of credit for that; is that correct?

8 A. You said that we've already determined that
9 it has to exist?

10 Q. That a buffer has to exist, and now we,
11 ecology, are saying we're going to give some level of
12 credit for enhancement of the buffer; is that correct?

13 A. We're giving credit for a buffer that is 200
14 feet wide, so it's 100 feet on each side of the creek,
15 and that buffer is being revegetated.

16 Q. Does the upland buffer enhancement category
17 include both the requirement for the buffer and the
18 enhancement with vegetation or whatever you put in a
19 buffer, or is the upland buffer enhancement category
20 here simply referring to what you do to the buffer
21 after you've required its establishment?

22 A. The acreage -- the 50.66 acres that
23 translates into 13.31 mitigation credits includes the
24 entire area that's being provided in a protected
25 buffer.

1 Q. Let me try it another way. If you did not
2 have the category here that said upland buffer
3 enhancement, is there any other category in this table
4 that includes a requirement that buffers themselves
5 exist?

6 A. I guess I'm -- let me give you another
7 example. At the Paine Field wetland mitigation bank in
8 Everett, there is two --

9 Q. I think I'd rather you answer my question.

10 A. Okay.

11 MR. EGLICK: If you could read back the
12 question, please.

13 (The reporter read back as requested.)

14 Q. (BY MR. EGLICK) And the table I'm referring
15 to is this table paragraph 18, page 8 of your
16 declaration, which I think it's obviously based on.

17 A. So if we didn't call it upland buffer
18 enhancement, where would we account for 50.66 acres?

19 Q. Well, I guess my question is, isn't buffer
20 required anyway?

21 A. It depends on where and how much. Again,
22 when I gave you the Vacca Farm example, if this was the
23 only area where the mitigation activity was occurring,
24 we would require a buffer be placed around that
25 wetland. That's not the case in this situation.

1 MR. EGLICK: Could you read back that answer,
2 please?

3 (The reporter read back as requested.)

4 Q. (BY MR. EGLICK) What buffer would you require
5 around the Vacca Farm in the example you just gave?

6 A. There is a buffer around Vacca Farm and Lora
7 Lake that's being required as part of this project.

8 Q. And what is that?

9 A. It's variable. On Lora Lake, I think what's
10 being provided is 25 feet. I think there's room for
11 about 60 feet between Des Moines Memorial Drive and
12 Vacca Farm.

13 Q. And is there any buffer enhancement
14 associated with that?

15 A. Yes.

16 Q. And is that buffer enhancement included
17 anywhere in this table on paragraph 18, page 8 of your
18 declaration?

19 A. I think it is, yes.

20 Q. Where?

21 A. I think it's included in the 50.66.

22 Q. And what is the enhancement that's included?
23 What does it consist of?

24 A. Well, on Lora Lake, there is a shelf if you
25 will of flat ground. It's about 25 to 30 feet wide,

1 and that area is being revegetated into a scrub/shrub
2 community, I believe. The bulkhead that forms much of
3 the shoreline on the lake is being knocked out, and the
4 shoreline is being made more natural if you will. So
5 it's essentially growing a buffer where there isn't one
6 now.

7 Q. And would that be the same kind of activity
8 that's referred to in upland buffer enhancement for the
9 whole 50 acres?

10 A. Generally. The natural resource mitigation
11 plan has quite a bit of narrative of what the buffer
12 enhancement entails. It shows species. It sort of has
13 a template for the planting plan and so forth.

14 Q. So is it largely a planting plan?

15 A. It's largely a planting plan. It also
16 includes control of invasive species like primarily
17 blackberry and reed canary grass, Japanese knotweed
18 where it exists. Along the creek it includes removal
19 of nonnative material like rebar and concrete and just
20 garbage that we typically find in urban streams.

21 Q. Anything else?

22 A. Well, the idea is to grow back a multistory
23 riparian corridor.

24 Q. And what credit, then, is given that in this
25 table, that plan you've just described?

1 A. The credit is one to five, so there's a 1 to
2 5 discount, so there's five acres of riparian buffer
3 reestablishment, and it is given one acre credit.
4 Q. And what percent if you know of the in-basin
5 mitigation is actual wetland creation?
6 A. What percent?
7 Q. Yes.
8 A. There's zero percent in-basin creation.
9 Q. And what percent is wetland restoration?
10 A. By acreage or by credit?
11 Q. By acreage.
12 A. Well, I would probably ask you for a
13 calculator, but it's about 10 percent, I believe.
14 Q. What is meant by wetland function?
15 A. Wetland functions are the physical, chemical,
16 and biological -- let me backtrack. Wetland functions
17 are what wetlands do on the landscape as compared to
18 wetland values. You often hear a term "wetland
19 functions and values," and it's important to separate
20 those.
21 Q. Is there anything with regard to -- well,
22 what's your understanding of what function is as
23 opposed to value?
24 A. Well, wetland functions vary on the landscape
25 depending on the type of wetland, their position on the

1 landscape, and so forth, but generally speaking, we say
2 that wetlands can -- they provide water storage areas
3 if they're connected to surface flow. They provide a
4 tremendous amount of primary productivity, so they
5 support a productive food web that then supports a wide
6 variety of species. Some wetlands improve water
7 quality. They play an important role in the role in
8 nutrients in aquatic systems.
9 Q. And are there some functions that are
10 considered higher than others in terms of wetlands?
11 A. Higher? Well, that would be a value
12 judgment.
13 Q. Well, do wetland scientists make those
14 judgments?
15 A. We make them all the time.
16 Q. And what's a higher functioning wetland
17 typified by functionally?
18 A. Well, when you say a higher functioning, do
19 you say that -- I want to make sure I understand.
20 There are different levels at which wetlands will
21 provide these functions. Is that what you mean by
22 higher functioning?
23 Q. Is there a hierarchy of functions?
24 A. In terms of our preference?
25 Q. Yes.

1 A. It depends on who you talk to.
2 Q. Well, I think today I'm talking to you,
3 Mr. Stockdale.
4 A. Okay. All right.
5 Q. For example --
6 A. It's an important clarification, because it
7 depends on who you're talking about, okay? Flood
8 storage is a function that as a society and as
9 government agencies that we value because it's what
10 wetlands do, but the land owner that owns that wetland
11 may not personally value that function.
12 Q. But you're not answering my question. I
13 think I did clarify it. I'm not asking you to speak
14 for the land owner, and I'm not asking you to speak for
15 local governments or anything of that sort. I'm asking
16 you as Erik Stockdale, who's been presented here today
17 by ecology as ecology's -- you're listed -- I assume
18 you know this -- as ecology's wetland expert. You know
19 that, don't you?
20 A. Yes.
21 Q. So here you are, and I'm asking you to put
22 yourself in your shoes, not in someone else's shoes,
23 and answer the question.
24 A. And the question is is there a hierarchy of
25 wetland functions?

1 Q. Yes.
2 A. In the Miller Creek basin?
3 Q. Well, let's start in the general and we'll
4 move to the specific.
5 A. Wetlands provide functions. That's what they
6 do. We have an assessment method that helps us
7 determine the level at which those functions are
8 provided. There are several methods that try to
9 address that.
10 Q. Well, I don't think I was asking you the
11 assessment method. Maybe I should ask you another
12 question. You're sitting here and you're supposed to
13 be ecology's wetland expert. In your understanding, is
14 the highest function that a wetland can provide
15 stormwater storage?
16 A. No. You're asking me a value judgment. The
17 question that we're charged with evaluating -- yeah,
18 it's important to distinguish between wetland functions
19 and wetland values, and what you're asking me is to
20 make a judgment of both at the same time, and I can't
21 do that.
22 Q. Is a wetland that functions primarily as a
23 stormwater storage facility a wetland that is
24 functioning at its highest possible level?
25 A. I would need more information in terms of the

1 landscape position to be able to answer that.
 2 Q. Did you make such an analysis with regard to
 3 the wetlands and the proposed wetland plan for the Port
 4 of Seattle third runway project?
 5 A. Did I do a function assessment?
 6 Q. Yes.
 7 A. No. The applicant did the function
 8 assessment.
 9 Q. I understand the applicant did one. I'm
 10 asking whether you did.
 11 A. No.
 12 Q. Based on the functional assessment that you
 13 reviewed, are the -- strike that.
 14 So you didn't do any independent assessment
 15 of wetland functions under the port's third runway
 16 application?
 17 A. No.
 18 Q. Did you do any quantification of what effect
 19 removal of anthropogenic activities or influences would
 20 have at the Port of Seattle third runway site?
 21 A. I'm trying to understand what you mean by
 22 anthropogenic.
 23 Q. Well, it's a term that Katie Walter used
 24 quite a bit in her deposition, so I assumed that was
 25 wetland scientist speak. You're not familiar with the

1 term?
 2 A. Oh, I know what it means, but I'm trying to
 3 understand -- I tried to understand what would happen
 4 in the Miller Creek buffer when the homes were removed
 5 within the buffer area. Is that --
 6 Q. I think my question was did you do a
 7 quantification?
 8 A. I did a qualification.
 9 Q. So is your answer no to the question of
 10 whether you did a -- let me finish, because otherwise
 11 the reporter won't get it.
 12 A. Sorry.
 13 Q. The answer is no, then, to the question of
 14 whether you did a quantification; is that correct?
 15 A. That's correct.
 16 Q. What's TRACON?
 17 A. TRACON is an FAA project that is being
 18 proposed for the -- in the buy-out area.
 19 Q. What do you mean in the buy-out area? You
 20 mean in the third runway project site, right?
 21 A. Yes.
 22 Q. And what does the project to your knowledge
 23 consist of?
 24 A. What does it consist of?
 25 Q. Yeah.

1 A. It is a building and accessory -- perhaps
 2 some accessory structures like radar facilities or
 3 radio towers and parking area.
 4 Q. How big a building?
 5 A. I don't know.
 6 Q. No idea?
 7 A. (Shaking head).
 8 Q. Did you ever inquire?
 9 A. No.
 10 Q. Do you know how many accessory structures?
 11 A. No.
 12 Q. How big?
 13 A. No.
 14 Q. Same question for the radar facilities. What
 15 do you know about them?
 16 A. I don't know.
 17 Q. You said parking?
 18 A. (Nodding head).
 19 Q. How much parking are we talking about?
 20 A. I don't know.
 21 Q. How many employees?
 22 A. I don't know.
 23 Q. Any idea?
 24 A. No.
 25 Q. Did you make any inquiries?

1 A. No.
 2 Q. I guess does the FAA and its employees count
 3 as anthropogens or whatever the correct word would be?
 4 You're laughing, to it must not be the correct word.
 5 A. Anthrops. Do they qualify as anthropogenic?
 6 Q. Yeah.
 7 A. Well, something that is anthropogenic would
 8 include something that is related to human activity.
 9 Q. So the TRACON unless they're using nonhumans
 10 would count, then, wouldn't it?
 11 A. Yeah. I believe so.
 12 Q. And the FAA is going to have employees there
 13 and so forth as far as you know, right?
 14 A. As far as -- yes.
 15 Q. And when you're building a building and a
 16 parking lot and radio and radar and the things you
 17 described, does that count as urban type development?
 18 A. Yes.
 19 Q. So is there some reason that -- in your
 20 declaration you've got a lot of what I guess you've
 21 told us now is unquantified description to the board of
 22 removal of all this what Katie Walter called
 23 anthropogenic stuff. Why isn't TRACON in there,
 24 something that's coming in?
 25 A. Well, I haven't reviewed TRACON as a project

1 because it hasn't triggered our permit process.
 2 Q. You were aware of it, weren't you?
 3 A. Yes. I'm aware of it.
 4 Q. And it's going on the third runway site; is
 5 that correct?
 6 A. Uh-huh.
 7 Q. And, in fact -- we'll get to this later --
 8 you've had communications about it in the course of
 9 your third runway review, haven't you?
 10 A. Yeah, because I wanted to know where it was
 11 going to be, sure.
 12 Q. And what the impacts were going to be?
 13 A. That's correct.
 14 Q. And it sounds as if you never got the
 15 information to quantify that, did you?
 16 A. The information that I have on it is that the
 17 footprint of that facility is going to occur outside of
 18 the wetlands and outside of the buffers on Miller
 19 Creek.
 20 Q. When you say the footprint, what do you mean
 21 by the footprint?
 22 A. Well, the project itself in terms of the
 23 buildings or the parking.
 24 Q. How many acres is the project?
 25 A. TRACON?

1 Q. Yes. ...
 2 A. I don't know.
 3 Q. Isn't it several?
 4 A. It's six or eight acres maybe.
 5 Q. And have you seen any plans?
 6 A. There is a document in my office, yeah. I've
 7 seen a drawing of where it's going.
 8 Q. Well, I'm asking if you've seen any plans,
 9 for example, of where the buildings are going to be
 10 located.
 11 A. I don't know. The project is more than the
 12 building. It's the imperviousness of the footprint of
 13 the project. It's the stormwater facility. It's the
 14 parking. That's what I mean by the footprint.
 15 Q. You say you have a document in your office.
 16 You mean you have a rolled up set of plans that shows
 17 where all those are going to be located?
 18 A. No. It's a report that was sent to us by the
 19 FAA.
 20 Q. Now, I notice there isn't anything about
 21 TRACON in the 401 certification, is there?
 22 A. I don't think there is, no.
 23 Q. Do you know anything about how they're
 24 handling stormwater for TRACON?
 25 A. No, I don't.

1 Q. With a parking lot, that would be an issue,
 2 wouldn't it?
 3 A. Uh-huh.
 4 Q. And with a building, wouldn't it?
 5 A. Yes.
 6 Q. How long have you known about TRACON? A
 7 couple years?
 8 A. A year or year and a half.
 9 MS. MARCHICRO: It's about 20 after 12.
 10 MR. EGLICK: Do you want to take lunch?
 11 MS. MARCHICRO: Yeah. Why don't we go ahead
 12 and do that.
 13 MR. EGLICK: Actually, let me make sure that
 14 I'm done with --
 15 MS. MARCHICRO: That's fine.
 16 (Discussion off the record.)
 17 Q. (BY MR. EGLICK) Do you know what TRACON
 18 stands for by the way? It's T-r-a-c-o-n, isn't it, all
 19 caps?
 20 A. Correct.
 21 Q. It's got something to do with how they do the
 22 air traffic control for the area, doesn't it?
 23 A. That's correct.
 24 Q. For the whole -- I'm not talking about just
 25 for Des Moines but for the whole region, right?

1 A. Yes. I do not know what the acronym stands
 2 for.
 3 MR. EGLICK: Why don't we take a lunch break.
 4 (Lunch recess taken 12:17 to 1:17 p.m.)
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AFTERNOON SESSION

1:17 P.M.

--oOo--

CONTINUING EXAMINATION

BY MR. EGLICK:

Q. Mr. Stockdale, have you had a chance to look at a copy of the current operative but stayed -- I guess operative in the sense it was issued on September 21 but stayed by the Department of Ecology -- 401 certification?

A. I looked at about half a page.

Q. Are you familiar with it?

A. Yes.

Q. By the way, I think we've agreed that this is exhibit, I believe, 2, isn't it --

MS. MARCHIGRO: It's No. 1.

MR. EGLICK: Then the August one must be 2.

Q. (BY MR. EGLICK) -- to the depositions. Did you review the certification, the September certification before it was issued?

A. Yes.

Q. Could you look at, then, Exhibit 172 to your deposition, which is your declaration? Do you see that?

A. Yes.

Q. Could you look at page 10? Could you read the -- do you see the sentence at line 10 to line 11 on page 10 that starts "under the 401 certification"?

A. Yes.

Q. And then it says, quote, the port is also required to retrofit the entire stormwater system at the airport, end quote. Do you see that?

A. Yes.

Q. Is there a particular portion of the 401 certification that you rely on for that statement? By that statement, I mean the statement, quote, under the 401 certification, the port is also required to retrofit the entire stormwater system at the airport, end quote.

A. I relied on the water quality program and my understanding of what was being required for the stormwater infrastructure for the project for that statement.

Q. In other words, where the declaration on page 1, lines 17 and 18 says that you, quote, have personal knowledge of the facts stated herein, end quote, do you see that? Page 1, lines 17 and 18. That's the first paragraph of the declaration.

A. Correct.

Q. Now, did you when you prepared this declaration have personal knowledge from your review of the 401 that the port is required to retrofit the entire stormwater system at the airport?

A. My understanding of that comes from the many meetings that I've attended with the port and with ecology staff.

Q. So was that understanding, then, based upon a review of the 401 that was actually issued and placed as the final decision by ecology?

A. The 401 reflects the final decision by ecology.

Q. But you're not able to show me in the 401 where this statement that you made on page 10, lines 10 through 11 of your declaration can be found, are you?

A. That's correct.

Q. Are you aware of whether or not the port is able under the 401 to not keep retrofitting of the facility in pace with its construction of new impervious surface?

A. I have no knowledge of that.

Q. In other words, just to make sure you understand the question, do you know whether or not under the 401 the port could build impervious facility at a pace faster, for example, than it retrofits

existing facilities?

A. I have no knowledge of that.

Q. Are you aware whether or not under the 401 the port can change its obligation for retrofit based on an argument of feasibility?

A. I have no knowledge of that.

Q. Are these issues that you at all were made aware of prior to writing your declaration on personal knowledge to the Pollution Control Hearings Board?

A. No.

Q. Why don't you take a look at page 26 of the September certification if you would. If you would review subsection C on that page in particular. Did you have a chance to read that?

A. I did.

Q. Do you notice where that section that you just read on subsection C on page 26 of the September 401 certification refers to a port demonstration that a 20 percent rate of retrofit isn't, quote, feasible, quote? Do you see that?

A. Yes.

Q. When you wrote your declaration to the board, were you aware that the port had any opportunity to argue that the retrofit schedule would not be feasible?

A. No.

1 Q. Could you look at Exhibit 173, please? We
2 were talking about that earlier. That's the e-mail
3 dated February 17, 2000, from you to Ray Hellwig and
4 Tom Luster about your meeting with Jim Kelley. Do you
5 see that?

6 A. Yes.

7 Q. And you recognize it?

8 A. Yes.

9 Q. Could you look on page 2 of that Exhibit 173
10 to your deposition? Could you read into the record if
11 you would the paragraph that starts, "I also told Jim"?
12 By the way, is Jim here a reference to Jim Kelley, the
13 port's wetland consultant from Parametrix?

14 A. Yes.

15 Q. Could you read this paragraph into the
16 record, please?

17 A. "I also told Jim that the prior converted
18 wetlands at Vacca Farm meet the wetland criteria in the
19 State of Washington wetland delineation manual, are
20 regulated as wetlands by the State under RCW 90.48 and
21 therefore need to be included in the enhancement
22 category for ratio calculation. As we have discussed
23 internally and with the Port on several occasions, this
24 is where there will be a difference in wetland acreage
25 between the way the Corps" -- c-o-r-p-s -- "/EPA apply

1 404 and the State applies RCW 90.48. The State is not
2 bound by the exclusion provided to certain agricultural
3 lands in the Food Security Act manual. The PCC label
4 does not reflect wetland functions and resulted from
5 political compromise in Washington DC with the
6 agricultural lobby."

7 Q. Thank you for reading that into the record,
8 and I assume where it says PCC, that's another
9 reference to prior converted --

10 A. Croplands.

11 Q. -- cropland? Okay.

12 Now, looking at this statement, you say,
13 quote, Vacca Farm, quote, therefore need to be included
14 in the enhancement category for ratio calculation,
15 quote. Is that as opposed to some other category that
16 Mr. Kelley was proposing to include Vacca Farm in?

17 A. I believe so.

18 Q. And what category was he proposing to include
19 it in?

20 A. I presume that it was wetland restoration.

21 Q. And what category have you included it in in
22 your table in your declaration to the board that we've
23 looked at as Exhibit 172?

24 A. I believe we -- I included it under the
25 wetland restoration, at least some of it.

1 Q. And, in fact, when we were talking about it
2 earlier, you referred to it as wetland restoration?

3 A. Right. Some of it may also be in -- some of
4 it also is in the wetland enhancement column.

5 Q. And was there some point at which you decided
6 that the comment that you made in this Exhibit 173 was
7 not accurate concerning Vacca Farm?

8 A. Yes.

9 Q. And when was that?

10 A. It was subsequent to this time when we
11 discussed further the restoration activity and the
12 enhancement activity that was being proposed at the
13 Vacca Farm.

14 Q. And when you say we, who are you referring
15 to?

16 A. Jim Kelley and myself.

17 Q. And when did this discussion occur that --
18 you'd agree the statement you make here in Exhibit 173
19 is not tentative in any way, is it, on its face?

20 A. The way it's written?

21 Q. Yeah.

22 A. No.

23 Q. So when was this meeting with Mr. Kelley that
24 resulted in you changing your position?

25 A. I don't recall exactly when it was.

1 Q. And do you know who else was there?

2 A. As far as I know, it was me who made that
3 decision.

4 Q. Well, was there anyone else in the meeting
5 with you and Mr. Kelley?

6 A. I don't think so.

7 Q. Did you keep notes of that meeting, because
8 we've looked, and under public disclosure, we're
9 supposed to have all your notes. We haven't seen any
10 notes of that meeting. Do you have any notes of it?

11 A. If it was made at one of those meetings, it
12 should be in those notes if I wrote it down.

13 Q. Is it possible you didn't write it down?

14 A. It's possible.

15 Q. And is there some memorandum to file that we
16 might not have received in which just as here you
17 memorialized your position you memorialized your
18 reversal in position?

19 A. I don't think so.

20 Q. Let's take a look at something else, then.
21 (Deposition Exhibit No. 175 was marked for
22 identification.)

23 Q. (BY MR. EGLICK) Showing you what has been
24 marked as Exhibit 175 to your declaration. Do you
25 recognize it? Excuse me. To your deposition.

1 A. Do you know what the date is for this
 2 attachment?
 3 Q. Well, actually, I think it's an attachment to
 4 Mr. Kelley's declaration, but if you don't recognize
 5 it, I can bring in the declaration itself. With that
 6 hint, do you recognize it?
 7 A. Well, this is the format that has been used
 8 in the natural resource mitigation plan to account for
 9 ratios of the mitigation package.
 10 Q. Why don't you take a look at the substance.
 11 Do you recognize this as coming from Mr. Kelley's
 12 declaration to the Pollution Control Hearings Board?
 13 A. Yes.
 14 Q. Remember when we were talking before about --
 15 well, first of all, you can see here that is it what,
 16 six acres of Vacca Farm is included under wetland
 17 restoration? Do you see that? 6.6 acres.
 18 A. Yes.
 19 Q. And then remember that number we were talking
 20 about in your declaration in that table again? We were
 21 talking about the amount of in-basin wetland
 22 enhancement, and I think you said it was 21.46 acres.
 23 A. Yes.
 24 Q. Didn't you say that that was -- am I correct
 25 you said that was the golf course, the Tyee golf

1 course?
 2 A. It included wetlands at the golf course,
 3 yeah. It includes some of the wetlands at the Vacca
 4 Farm.
 5 Q. And a number of other things as well, doesn't
 6 it?
 7 A. I think it also may include some of the
 8 wetlands that are associated with Des Moines Creek or
 9 Miller Creek.
 10 Q. If you take a look at Mr. Kelley's attachment
 11 to his declaration, Exhibit 175, does that give you
 12 some other information from his perspective?
 13 A. So again your question is?
 14 Q. My question is looking at Mr. Kelley's
 15 attachment D to his declaration to the board, which is
 16 Exhibit 175, does that give you further information at
 17 least from his perspective on what the components of
 18 the wetland enhancement category which you list in your
 19 table as 21.46 acres is?
 20 A. I'm trying to remember how we did -- there
 21 was something that we subtracted from 28.06. I'm
 22 trying to remember. One of the tables that we were
 23 working on had an addition error. I used their tabular
 24 data numbers to come up with this.
 25 Q. Well, would you agree with me that at least

1 based on Mr. Kelley's summary, Exhibit 175, that Tyee
 2 golf course is really a small part of what you call
 3 wetland enhancement, isn't it?
 4 A. Yeah. Yeah.
 5 Q. Let's take a look, then --
 6 (Deposition Exhibit No. 176 was marked for
 7 identification.)
 8 Q. (BY MR. EGLICK) Showing you what has been
 9 marked as Exhibit 176 to your declaration. Can you
 10 identify it?
 11 A. This is an e-mail that I sent to Ray Hellwig
 12 and Tom Luster on April 12, 1999, regarding bird strike
 13 hazard monitoring at Sea-Tac.
 14 Q. And what's bird strike hazard monitoring?
 15 A. This e-mail has to do with a series of
 16 discussions that we had with the airport regarding
 17 in-basin mitigation and the potential that those
 18 mitigation activities would have to increase the bird
 19 strike hazard in and around the airport.
 20 Q. And that was a claim that the port and FAA
 21 were making at various points, weren't they?
 22 A. Yes.
 23 Q. And you were suggesting, were you not,
 24 monitoring to determine, for example, whether there
 25 really would be a problem in the future?

1 A. That's correct.
 2 Q. And what kind of monitoring came out of this
 3 e-mail?
 4 A. As far as I know, no monitoring was
 5 conducted.
 6 Q. Then I can't ask you about it.
 7 (Deposition Exhibit No. 177 was marked for
 8 identification.)
 9 Q. (BY MR. EGLICK) Showing you what has been
 10 marked as Exhibit 177 to your declaration. Can you
 11 identify it?
 12 A. This is an e-mail that I sent to Tom Luster
 13 on April 19, 1999.
 14 Q. And the subject is an e-mail from Gail Terzi?
 15 A. That's correct.
 16 Q. And who is she?
 17 A. Gail Terzi works for the U.S. Army Corps of
 18 Engineers.
 19 Q. And she is an expert in wetlands, for
 20 example --
 21 A. Yes.
 22 Q. -- for the corps?
 23 A. She's one of them.
 24 Q. Is the text that is set out here from Gail
 25 Terzi?

1 A. Yes.

2 Q. And how did she happen to send this e-mail to
3 you if you know?

4 MR. PEARCE: Objection. It calls for lack of
5 personal knowledge.

6 MR. EGLICK: Well, we'll find out.

7 Q. (BY MR. EGLICK) If you know.

8 A. She sent it to me via e-mail.

9 Q. Right. How do you know what occasion there
10 was that she would send you an e-mail? Did you, for
11 example, call and ask her what the corps' view was on
12 the topic of the e-mail?

13 A. I don't recall.

14 Q. Well, were you at the point when this e-mail
15 was received from Gail Terzi exchanging information
16 from the corps on items related to review of the port's
17 applications?

18 A. We must have had a discussion about Highway
19 509.

20 Q. And what's Highway 509 have to do with all
21 this, all this being the port application?

22 A. The Department of Transportation is proposing
23 to connect 509 where it currently ends in the southwest
24 vicinity of the airport and connect it to Interstate 5.

25 Q. Actually, it's a port proposal, isn't it,

1 through the Department of Transportation?

2 A. It's a state highway, so I'm going to assume
3 it's a state project.

4 Q. You don't have any knowledge of port
5 involvement in it?

6 A. Well, it's being built with an off-ramp to
7 the airport.

8 Q. And what's the off-ramp going to be used for
9 in particular?

10 A. Well, it's going to serve as the southern
11 access point to the airport similar to the way that
12 there is a northern access point off of SR 518.

13 Q. And, in fact, isn't it true that it's going
14 to be used to facilitate bringing materials for the
15 third runway project to the airport site?

16 A. Well, that is being done off of an
17 interchange, isn't that correct, on the existing
18 highway?

19 Q. I have to ask you the questions.

20 A. I don't know. I've heard of various routes
21 that are going to be used to deliver fill material.

22 Q. Do you see in Exhibit 177 where Ms. Terzi
23 refers to "I agree"? Do you see that, quote, I agree
24 there are a lot of conflicting items going on, end
25 quote? Do you see that?

1 A. Uh-huh.

2 Q. She says, quote, about the 509 proposal and
3 the third runway, quote. Do you see that?

4 A. Yes.

5 Q. Who is she agreeing with? Do you know? Is
6 that with you?

7 A. I don't know.

8 Q. Was this in response to some communication
9 that you had sent to her?

10 A. I don't know.

11 Q. Do you see the sentence further down that
12 says, quote, also obviously the secondary and
13 cumulative impacts to the watershed(s) -- watersheds, I
14 guess -- takes on a whole new light when you consider
15 both projects, end quote? The "I guess" was my
16 interlineation. That's not in the quotation. Do you
17 see that?

18 A. I do.

19 Q. Do you know what she was referring to there?

20 A. Well, I believe she's referring to cumulative
21 impacts that may result from the 509 project when
22 considered together with the third runway project.

23 Q. In fact, if you look at the e-mail, isn't she
24 including another project as well in her comment, the
25 SASA project? Do you see that?

1 A. Yes.

2 Q. What's the SASA project?

3 A. I believe SASA stands for south aviation
4 safety area.

5 Q. Now, were those cumulative impacts to your
6 knowledge taken into account to your knowledge in the
7 401 decision issued by ecology on September 2001?

8 A. The cumulative impacts from 509 and SASA?

9 Q. Yes.

10 A. No.

11 Q. Let's look at something else, then.

12 (Deposition Exhibit No. 178 was marked for
13 identification.)

14 Q. (BY MR. EGLICK) Looking at what's been marked
15 as Exhibit 178 to your declaration -- to your
16 deposition. Boy, I'll tell you. After explaining to
17 you the difference, I'm now caught in your terminology
18 here. Exhibit 178 to your deposition, can you identify
19 it?

20 A. This is an e-mail that I forwarded to Tom
21 Luster. It's an e-mail that was sent to me by Sarah
22 Suggs. She sent it to me on January 28 of 2000, and I
23 forwarded it to Tom that same day.

24 Q. And who is Sarah Suggs again?

25 A. Sarah Suggs is one of my co-workers. She's a

1 wetland specialist in the northwest region of ecology.
 2 Q. Now, why did you -- and I see you forwarded
 3 it to Tom Luster with the question, quote, did you see
 4 this, quote.
 5 A. That actually follows the subject line that
 6 Sarah Suggs sent to me.
 7 Q. You didn't change it?
 8 A. No.
 9 Q. And why did you forward it to Tom Luster?
 10 A. Tom Luster was the 401 coordinator for the
 11 project at the time.
 12 Q. For what project?
 13 A. For the third runway project.
 14 Q. And did you understand that this SEPA notice
 15 was part of the third runway project?
 16 A. Yes.
 17 Q. And could you read into the record the
 18 description of what the SEPA notice was for?
 19 A. The description from the SEPA notice reads
 20 "third runway wetland fill and temporary construction
 21 at Sea-Tac International Airport; include the quantity
 22 of wetlands affected, design of retaining wall and
 23 design of construction only temporary interchange;
 24 more."
 25 Q. Now, what did you understand that temporary

1 interchange was a reference to? Was that 509 temporary
 2 interchange?
 3 A. Below that it says "location, interchange at
 4 SR 509 and South 176th Street."
 5 Q. So that was your understanding that it was
 6 related to the 509 temporary interchange in part?
 7 A. Yes.
 8 (Deposition Exhibit No. 179 was marked for
 9 identification.)
 10 Q. (BY MR. EGLICK) Showing you what has been
 11 marked as Exhibit 179 to your deposition. Can you
 12 identify it?
 13 A. It's dated April 20, 2000, and this looks
 14 like my handwriting.
 15 Q. So these are your handwritten notes?
 16 A. Yes.
 17 Q. Two pages of them?
 18 A. Yes.
 19 Q. Are these notes of a meeting?
 20 A. It was a meeting at the port.
 21 Q. Did you have a list there of who was in
 22 attendance?
 23 A. Yes.
 24 Q. Can you read that into the record? Or I'll
 25 tell you what. I'll read it, and tell me if I've got

1 your writing -- if I'm reading your writing. Tom
 2 Walsh, right?
 3 A. Yes.
 4 Q. Lawyer for the port, right?
 5 A. Yes.
 6 Q. Tracie Goodwin, lawyer for the port?
 7 A. Yes.
 8 Q. Ray, is that Ray Hellwig?
 9 A. Ray Hellwig.
 10 Q. Joan Marchioro, ecology's lawyer?
 11 A. Yes.
 12 Q. Tom Luster?
 13 A. Yes.
 14 Q. Elizabeth L, is that Elizabeth Leavitt?
 15 A. Leavitt.
 16 Q. L-e-a-v-i-t-t?
 17 A. L-e-a-v-i-t-t.
 18 Q. Michael Cheyne for the port, C-h-e-y-n-e?
 19 A. Yes.
 20 Q. Paul Fendt, F-e-n-d-t, for the port?
 21 A. Yes.
 22 Q. Jim Kelley for the port?
 23 A. Yes.
 24 Q. It says Kevin. Is that Kevin Fitzpatrick?
 25 A. I believe so.

1 Q. And that's DCE, right?
 2 A. Yes.
 3 Q. And what was the purpose of the meeting?
 4 A. It looks like there were five different items
 5 that we talked about that day.
 6 Q. And these were items related to the third
 7 runway application pending before DCE?
 8 A. Correct.
 9 Q. And was one of them the 509 temporary
 10 interchange?
 11 A. Yes.
 12 Q. Do you see you have a line maybe about ten
 13 lines down from the top where you see Tom Luster's name
 14 and then a colon after it?
 15 A. Uh-huh.
 16 Q. Can you read what you have in your notes
 17 after that? I assume this is what he said at the
 18 meeting?
 19 A. Yes.
 20 Q. Could you read it?
 21 A. It says, "If there is an indirect impact, it
 22 needs to be folded into the 401."
 23 Q. And was it your understanding that there was
 24 an indirect impact from the 509 temporary interchange?
 25 A. I don't recall if we determined that there

1 was an indirect impact from that project.
 2 Q. Well, what was your understanding?
 3 A. Well, there was a lot of discussion about the
 4 extent of wetlands on the DOT right-of-way. I spoke
 5 with Amanda quite a bit about that. I spoke to Gail
 6 Terzi. There was a question about some sort of a
 7 detention pond I believe on the west side of 509 that
 8 had taken on wetland characteristics, and there was a
 9 question about whether it was a pollution control
 10 facility or a regulated wetland.
 11 I think the corps ultimately decided that
 12 there was a very small wetland like a couple of hundred
 13 square feet that existed on -- I do not recall where on
 14 that -- where that interchange is being built that may
 15 be affected or not. I don't remember. But it seemed
 16 like such an insignificant impact that I don't remember
 17 addressing it later on down the road.
 18 Q. Now, the corps was addressing direct impacts
 19 on a wetland, wasn't it?
 20 A. The corps considers indirect impacts as well.
 21 Q. I'm asking with regard to the 509 temporary
 22 interchange issue, the corps was considering direct
 23 impacts on a wetland, wasn't it?
 24 A. Well, they looked at this whole question
 25 about wetlands that were going to be affected by the

1 interchange, yes.
 2 MR. EGLICK: Could you read back the
 3 question, please?
 4 (The reporter read back as requested.)
 5 A. Yes.
 6 Q. (BY MR. EGLICK) Would you agree if you know
 7 that the scope of 401 review is broader than the scope
 8 of corps review with regard to effects on wetlands?
 9 A. Yes.
 10 Q. And one way that it's broader is that ecology
 11 under 401 looks to indirect impacts, doesn't it?
 12 A. Yes.
 13 Q. What were the indirect impacts that were the
 14 subject of concern and I guess referred to --
 15 Mr. Luster says if there's an indirect impact. We know
 16 that Ms. Terzi referred to cumulative and indirect
 17 impacts. What were those indirect impacts that were
 18 being considered, if any, with regard to that 509
 19 interchange?
 20 A. Well, they could include the failure of
 21 erosion control practices. It could include deposition
 22 or discharge of dust into the wetland if loads weren't
 23 -- there are a lot of different things you could
 24 consider. I think a lot of different things were
 25 considered.

1 Q. When you say deposition of dust, you're not
 2 talking about bringing dust in in front of a court
 3 reporter, are you?
 4 MS. MARCHIORO: Objection; argumentative.
 5 Q. (BY MR. EGLICK) I'm asking you in a
 6 semihumorous way, Mr. Stockdale, what do you mean by
 7 deposition of dust?
 8 A. Well, when construction equipment delivers
 9 and hauls dirt, the roadway becomes coated with dust
 10 from the trucks as well as the dirt that is tracked
 11 over the road, and then that material then is
 12 discharged during a storm event.
 13 Q. And were there enough trucks involved to your
 14 knowledge with regard to the 509 temporary interchange
 15 to make that a concern?
 16 A. I would have deferred to the water quality
 17 people to make that determination.
 18 Q. Well, did you look into it at all from the
 19 point of view of wetland impacts?
 20 A. When I looked at the wetland impacts from the
 21 construction of the interchange, I recall feeling like
 22 the impacts were insignificant.
 23 Q. And did that include indirect impacts?
 24 A. There really wasn't much for me to consider
 25 in terms of indirect impacts.

1 Q. Did you know how many trucks a day were going
 2 to be using the temporary interchange over how many
 3 years?
 4 A. No.
 5 Q. Did you ask?
 6 A. No.
 7 Q. Would it make a difference if it were one
 8 truck a day for one week or 10, 20, 30, a hundred, a
 9 thousand times that amount over a period of years?
 10 A. The water quality engineer would have looked
 11 at that to make sure that a stormwater management
 12 system for that interchange was adequate to manage for
 13 the anticipated traffic levels on that interchange.
 14 Q. Were you involved in that review?
 15 A. No.
 16 Q. Do you know if it actually took place?
 17 A. No. I don't know.
 18 Q. Looking at the bottom of your notes on the
 19 first page here. Do you see the heading CZM?
 20 A. Yes.
 21 Q. And you say here, quote, do you not,
 22 agreement to postpone CZM consistency may not be legal,
 23 end quote?
 24 A. Yes.
 25 Q. What's that a reference to?

1 A. I believe at the time the 401 application was
 2 bumping up against the six-month CZM consistency
 3 determination.
 4 Q. And this refers to an agreement to postpone
 5 that determination, does it not?
 6 MS. MARCHIORO: Objection. The document
 7 speaks for itself.
 8 A. We must have talked about it, because that's
 9 what I wrote down.
 10 Q. (BY MR. EGLICK) Well, when you referred to an
 11 agreement, what were you referring to?
 12 A. Well, I don't have knowledge of -- I don't do
 13 consistency determinations. In fact, they still
 14 confuse me, so I don't understand -- I can't answer how
 15 it was handled other than what it says.
 16 Q. Now, as I understand it, it's your testimony
 17 that there was a decision that the 509 temporary
 18 interchange didn't cause any direct impacts; is that
 19 right?
 20 A. That's what I recall, yes.
 21 (Deposition Exhibit No. 180 was marked for
 22 identification.)
 23 Q. (BY MR. EGLICK) Showing you what has been
 24 marked as Exhibit 180 to your deposition. Can you
 25 identify it?

1 A. These are my handwritten notes from an
 2 internal meeting at ecology on May 23 of 2000.
 3 Q. And the attendance list is Jeannie. Is that
 4 Jeannie Summerhays?
 5 A. Yes.
 6 Q. S-u-m-m-e-r-h-a-y-s?
 7 A. Yes.
 8 Q. Ray H, is that Ray Hellwig?
 9 A. Yes.
 10 Q. Tom Luster?
 11 A. Yes.
 12 Q. Joan M?
 13 A. Joan Marchioro.
 14 Q. John Glynn, G-l-y-n-n?
 15 A. Yes.
 16 Q. Kevin F, is that Fitzpatrick?
 17 A. Yes.
 18 Q. And Paula --
 19 A. Ehlers.
 20 Q. E-h-l-e-r-s?
 21 A. Correct.
 22 Q. And these are all ecology persons involved in
 23 the 401 certification application by the port?
 24 A. Yes.
 25 Q. Would you look at the middle of the page? Do

1 you see where you have a section that says "509 temp
 2 access"?
 3 A. Yes.
 4 Q. And is that a reference to this issue of the
 5 509 temporary interchange that we've been discussing?
 6 A. Yes.
 7 Q. Can you take a look at that? Do you see
 8 where it says "corps makes" -- what does that say?
 9 A. Primary call.
 10 Q. And then you have written there, "There are
 11 no direct impacts," right?
 12 A. That's correct.
 13 Q. And then could you read the next sentence,
 14 please?
 15 A. "Public notice did not address" -- I believe
 16 that's RDF for regional detention facility -- "and
 17 other projects with potentially and cumulatively
 18 significant impacts."
 19 Q. And when you say or when you said here in
 20 your notes public notice, what were you referring to?
 21 A. The 404 public notice.
 22 Q. And was that the joint notice issued by the
 23 corps and the Department of Ecology for the 404, 401
 24 application?
 25 A. Yes.

1 Q. And to your knowledge, has there ever been a
 2 public notice issued by the corps or ecology that has
 3 addressed what you say here was not?
 4 A. The public notice was not reissued.
 5 Q. Well, there was a new public notice issued,
 6 wasn't there, after the port withdrew its application?
 7 A. Yes. You are correct.
 8 Q. So my question is meant to call your
 9 attention to that as well. I don't want you to leave a
 10 misimpression on the record, and I wouldn't want to
 11 lead you to do that, so think about not just the notice
 12 that was operative on May 23, 2000, when you wrote
 13 these notes but the notice that was then issued months
 14 later. Did that notice to your knowledge --
 15 A. To my knowledge, it did not.
 16 Q. -- include the things which you note here
 17 were omitted?
 18 A. Correct.
 19 Q. So that notice did not include those things,
 20 correct?
 21 A. Correct.
 22 (Deposition Exhibit No. 181 was marked for
 23 identification.)
 24 Q. (BY MR. EGLICK) Showing you what has been
 25 marked as Exhibit 181 to your deposition. Can you

1 identify it?
 2 A. These are my notes on June 5 of 2000. It
 3 looks like it was a conference call. Joan Marchioro
 4 was on the phone. It looks like at the port it says
 5 Tom Hubbard, Elizabeth --
 6 Q. Would that be Leavitt?
 7 A. Elizabeth Leavitt.
 8 Q. Would that be Jim Kelley under her name?
 9 A. I believe that's Jim Kelley. I think I keep
 10 misspelling his name, so I apologize. And then at
 11 ecology it was obviously me, Ray Hellwig, John Glynn.
 12 Q. By the way, I don't know whether I asked you
 13 this, but remember on Exhibit 180, when you say RDF
 14 there, did I ask you -- and if I did, I apologize --
 15 RDF means regional detentional facility?
 16 A. Regional detention facility.
 17 Q. And what is that by the way?
 18 A. That is at the northwest ponds. That's the
 19 regional facility that King County is building on the
 20 northwest ponds.
 21 Q. Now, is that something that is on the
 22 property that's part of the airport project site?
 23 A. It's part of the golf course, and it includes
 24 the northwest ponds.
 25 Q. Let's go back to -- and if you know, hasn't

1 the port at one time or another said, well, maybe we'll
 2 use that RDF instead of doing some of these other
 3 things we've said we're going to do with regard to
 4 stormwater?
 5 A. Yeah. I mean, there was discussion about
 6 that, but to be honest, I don't remember how it ended
 7 up.
 8 Q. So you don't know whether in the current
 9 stormwater plan they refer to that again, do you?
 10 A. I don't know.
 11 Q. Have you seen the latest version of the
 12 stormwater management plan from the port?
 13 A. Which is the latest?
 14 Q. I think it's -- that's a good question. I
 15 believe the latest is December 2001, but that's not
 16 necessarily gospel.
 17 A. I haven't looked at that one.
 18 Q. When is the last one you did look at? That's
 19 probably a better thing to kind of pin things down here
 20 since my information may not be accurate.
 21 A. I wouldn't be able to answer that right now.
 22 Q. Was it before or after the latest ecology 401
 23 decision was issued in September?
 24 A. It was before that.
 25 Q. Now looking at Exhibit 181. Back to that.

1 There's some discussion here of --
 2 MR. EGLICK: Why don't we take a break.
 3 (Recess taken.)
 4 Q. (BY MR. EGLICK) Exhibit 181 is what we were
 5 talking about. You there, Mr. Stockdale?
 6 A. Yes.
 7 Q. There's a reference here to, quote, what sort
 8 of emergency action will override 401, end quote.
 9 What's that all about?
 10 A. This is at a time when we were trying to
 11 address the wildlife hazard management plan that was
 12 developed for the airport by the USDA animal control
 13 people. That's the manual that the wildlife hazard
 14 managers at the airport use to mitigate for bird strike
 15 hazard problems.
 16 At one point in time, there was a discussion
 17 about whether or not a quote-unquote emergency at the
 18 airport could override the 401 and allow the airport to
 19 among other things fill the wetlands that were being
 20 provided for mitigation.
 21 Q. So in other words, the issue was whether what
 22 the port was promising it would preserve, enhance, and
 23 so on in terms of wetlands could later be done away
 24 with or altered under the rubric of emergency?
 25 A. Yeah. Maybe not done away with, but where

1 water could be drained, certain vegetation could be
 2 removed.
 3 MR. PEARCE: Objection.
 4 Q. (BY MR. EGLICK) Did you mention the term
 5 "fill"?
 6 A. Yeah. That's obviously to us the worst case
 7 scenario.
 8 Q. I'm not a wetlands scientist, but I always
 9 thought if you filled a wetland you did away with it.
 10 Is that not true?
 11 A. I guess I should say in addition to -- short
 12 of doing away, there are these other action or
 13 activities that were being discussed to manage for bird
 14 strike hazards.
 15 Q. And filling would do away with a wetland,
 16 wouldn't it?
 17 A. Oh, sure.
 18 Q. Now, how did that issue get raised?
 19 A. Well, it's been an undercurrent in the
 20 mitigation design at the airport all along.
 21 Q. The issue of emergency?
 22 A. No. The issue of the port's understandable
 23 interest in limiting bird strike hazards near the
 24 airport.
 25 Q. And that's the issue in which you suggested

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1 that they do a monitoring study that we talked about
 2 earlier; isn't that right?
 3 A. Yes.
 4 Q. That was never performed; isn't that right?
 5 A. That's correct.
 6 Q. So where did the idea come from in the
 7 discussions that, well -- and I assume the idea was
 8 that whatever the 401 requires, it might later be
 9 changed; is that right?
 10 A. (Nodding head).
 11 Q. Unilaterally; is that correct?
 12 A. That's correct.
 13 Q. Was that something that ecology suggested?
 14 A. No.
 15 Q. So who suggested that or what entity
 16 suggested that? That might be an easier question for
 17 you.
 18 A. It came -- I recall it coming up at a meeting
 19 at the port or somebody from the airport said that the
 20 airport manager, the operations manager, felt like he
 21 had the authority to override the 404, the 401 because
 22 of the authority that the FAA gave him under this bird
 23 strike hazard requirement.
 24 Q. And didn't there come a time when you more or
 25 less put your foot down and said it has to be made

1 clear as part of any 401 that no one will unilaterally
 2 override the 401 plans with regard to wetlands, for
 3 example?
 4 A. Yeah. I guess you could put it that way. We
 5 had a lot of discussion about this.
 6 Q. And is there someplace in the 401 that was
 7 issued in September 2001, which is the last one, I
 8 guess, issued by ecology -- I know it's the last one
 9 issued by ecology that we know of now. Is there
 10 someplace in that 401 where ecology addressed that
 11 issue directly? Do you know what I mean by that issue?
 12 A. The emergency.
 13 Q. Yes.
 14 A. I don't think that we resolved it in the 401.
 15 I think we reached a point in signing off on the
 16 wildlife hazard management plan where I felt like the
 17 issue had been resolved.
 18 Q. Well, as far as you know in terms of
 19 conditions that govern how the port will conduct
 20 itself, are they not with regard to the 401 in the 401?
 21 A. They meaning?
 22 Q. Those conditions governing how the port will
 23 conduct itself.
 24 A. As far as the protection, the long-term
 25 protection of the wetlands, yes, that's in the 401.

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1 There are restrictive covenants that are part of the
 2 401.
 3 Q. Well, isn't this an issue -- and by this I
 4 mean this question of whether the port will later
 5 decide there is a quote-unquote emergency and change
 6 the plans it's agreed to -- isn't that an issue that
 7 should have been addressed and resolved as part of the
 8 final negotiations on the 401 document that was issued?
 9 MR. PEARCE: Object to the form.
 10 A. We could have included language. I don't
 11 think the 401 has anything about that. I doubt it
 12 does. I'd have to read it to be sure. But, again, I
 13 think that I feel like we resolved that when we finally
 14 got the wildlife hazard management plan to be very
 15 prescriptive as to what steps needed to be taken when
 16 certain problems came up.
 17 Q. (BY MR. EGLICK) And is the wildlife hazard
 18 management plan description of the process that you're
 19 referring to incorporated as a condition of the 401?
 20 A. No. I don't think so.
 21 Q. What's your understanding of how long the 401
 22 or a 401 certification is supposed to be in effect with
 23 regard to a particular project?
 24 A. You know, I'm not sure. There are certain
 25 requirements that kick in and then go away and some

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1 that last longer, so it depends on what element of the
 2 401.
 3 Q. Would you agree with the statement that the
 4 401 certification is supposed to be for the life of the
 5 project?
 6 A. Yeah.
 7 Q. Would you agree with the idea that the life
 8 of the project and of the certification can be longer
 9 than any individual's tenure at the Department of
 10 Ecology, for example?
 11 A. Tenure?
 12 Q. Yeah.
 13 A. Oh, yeah.
 14 Q. So you're smiling, right? Do you know
 15 something I don't about your tenure?
 16 A. Well, I don't intend on being there forever.
 17 Q. That's my point. What do they say in the old
 18 testament? There rose up a pharaoh who knew not
 19 Joseph. Do you recall that section?
 20 A. Uh-huh.
 21 Q. Is it possible, then, that there could be a
 22 time when your oral history as to what you thought the
 23 port agreed to with regard to an emergency would not be
 24 available?
 25 A. The agreement that we reached is contained in

1 the wildlife hazard management plan.
 2 Q. Which you've already agreed is not included
 3 in the 401 certification, is it?
 4 A. Yeah. I don't think we did.
 5 (Deposition Exhibit No. 182 was marked for
 6 identification.)
 7 Q. (BY MR. EGLICK) Showing you what has been
 8 marked as Exhibit 182 to your deposition. Can you
 9 identify it?
 10 A. This is an e-mail that I sent to Jim Kelley
 11 and Elizabeth Leavitt on Monday, June 12, of the year
 12 2000 regarding wildlife hazard management plan and a
 13 conversation that I had, I believe, with Jim Kelley on
 14 June 9 of 2000, so three days before.
 15 Q. This e-mail in section 6 starting on -- I
 16 guess starting and finishing on the first page deals,
 17 does it not, with this question again of whether the
 18 port could fill a wetland as a so-called emergency
 19 action; is that right?
 20 A. Yes.
 21 Q. Can you read into the record the last two
 22 sentences of section 6?
 23 A. "Ecology will seek clear indications that the
 24 airport manager" --
 25 Q. Can I interrupt you? I apologize for that,

1 but I wanted you to start with the beginning of that
 2 sentence.
 3 A. You're right. Okay. "As part of the final
 4 negotiations on the 401, Ecology will seek clear
 5 indications that the airport manager understands what
 6 is required of the Port to remain in compliance with
 7 the permit. I say this now, and on the record, so that
 8 there is no misunderstanding in the future that we
 9 identify this as an area of continued concern."
 10 Q. When you say on the record, what do you mean?
 11 You just grunted, but the court reporter can't pick up
 12 grunts, so I'll have to ask you what that grunt means,
 13 Mr. Stockdale. You're laughing.
 14 A. I laughed at myself because obviously it's on
 15 the record. It was in an e-mail.
 16 Q. Well, it was on the record in the sense that
 17 we got it in a stack of papers under the Public
 18 Disclosure Act, and maybe you meant for us to find it
 19 or not, but I guess what I'm --
 20 A. Oh, no, no, no.
 21 Q. I'm asking what you meant by on the record at
 22 the time.
 23 A. Well, at the time, I think the fact that I
 24 sent an e-mail put it in the record, but I'm just
 25 laughing because I tend to be -- repeat myself.

1 (Deposition Exhibit No. 183 was marked for
 2 identification.)
 3 Q. (BY MR. EGLICK) Showing you what has been
 4 marked as Exhibit 183 to your deposition. Can you
 5 identify it?
 6 A. This is an e-mail dated July 17, 2000, from
 7 me to Tom Luster regarding proposed Sea-Tac TRACON.
 8 Q. Now, is this the TRACON -- all upper case
 9 T-r-a-c-o-n -- facility we talked about earlier in your
 10 deposition?
 11 A. Yes.
 12 Q. You have on here -- why don't you just read
 13 your communication to Mr. Luster into the record,
 14 please.
 15 A. "For some reason this project" -- now, below
 16 -- hang on. Below it is an e-mail that Tom Luster had
 17 forwarded to me from a Michelle Avolio at the FAA, so I
 18 guess in response to Tom I said, "For some reason this
 19 project just falls off my radar screen. Is it still
 20 active? Are we on the critical path, or are we in a
 21 hold position? If so, when do we run out of gas?" I
 22 guess I'd been working on airports for a while.
 23 Q. That was an aviation analogy, I take it?
 24 A. I guess.
 25 Q. And then subsequent to that, I understand

1 then you were advised that it was a project that was
 2 proceeding; is that correct?
 3 A. Yes.
 4 Q. And who is Michelle Avolio, A-v-o-l-i-o?
 5 A. I don't know other than that she works at the
 6 FAA.
 7 Q. She's the person in any event who had sent an
 8 e-mail to Tom Luster, who then passed it on to you and
 9 to which you then responded; is that correct?
 10 A. That's correct.
 11 (Deposition Exhibit No. 184 was marked for
 12 identification.)
 13 Q. (BY MR. EGLICK) Showing you what has been
 14 marked as Exhibit 184 to your deposition. Can you
 15 identify it?
 16 A. It is an e-mail sent to me on September 27 of
 17 2000. The subject line says "forward Dinsmore draft."
 18 Q. Why don't you take a minute to familiarize
 19 yourself with it. Let me know if you're through.
 20 A. I am.
 21 Q. Do you know what the Dinsmore draft is?
 22 A. No.
 23 Q. Do you know what this was about, this e-mail
 24 that Tom Luster sent you?
 25 A. I can guess.

1 Q. Well, I don't want you to guess. It doesn't
 2 ring a bell with you, any of this?
 3 A. Well, I know what was happening at the time
 4 that this was sent out.
 5 Q. Why don't you tell us.
 6 A. The second public notice was up against its
 7 one-year deadline, and we were not yet ready to approve
 8 the project. There was still outstanding issues. I
 9 believe that we asked the port to either withdraw the
 10 application and reapply or we were going to give them a
 11 denial.
 12 Q. Can you look on the third page of Exhibit
 13 184?
 14 A. Uh-huh.
 15 Q. Are you on the third page? Could you count
 16 in one, two, three? Maybe yours is different than
 17 mine. That's quite possible. I got a page that's
 18 numbered at the bottom right 318. Are you missing that
 19 page?
 20 A. That's page 2.
 21 Q. Are you missing page 317, then?
 22 A. Yes.
 23 MR. PEARCE: I'm also missing 317.
 24 MR. EGLICK: Can I take one of the unofficial
 25 copies and -- off the record.

1 (Discussion off the record.)
 2 (Deposition Exhibit No. 185 was marked for
 3 identification.)
 4 Q. (BY MR. EGLICK) Showing you what has been
 5 marked as Exhibit 185 to your deposition. Can you
 6 identify it?
 7 A. This is an internal ecology memo that I wrote
 8 on October the 9th of 2000 to Tom Luster, Ray Hellwig,
 9 Joan Marchioro, Kevin Fitzpatrick, Dave Garland, and
 10 Jeannie Summerhays.
 11 Q. And what was your prompt or occasion for
 12 writing the memo?
 13 A. This memo outlines the remaining issues of
 14 the natural resource mitigation plan that I had
 15 identified at the time -- at that date, as of that
 16 date.
 17 Q. Was there a reason that you were as of that
 18 date, October 9, 2000, preparing such a summary?
 19 A. Yes.
 20 Q. What was it?
 21 A. I was moving off of the project, and I needed
 22 to document moving off the project in the sense of the
 23 day-to-day review and attending of meetings and so
 24 forth, and I wanted to document for the record what the
 25 remaining issues were at that time.

1 Q. So if you look back at 18 -- do you have 184
 2 there such as it is at the moment?
 3 A. I do.
 4 Q. Do you see the date at the top of 184 is
 5 what?
 6 A. September 27.
 7 Q. On September 27, 2000, had you requested or
 8 been removed from the project?
 9 A. I wasn't removed. It's less than two weeks
 10 apart. We were at that point where I was removing
 11 myself from the project.
 12 Q. But as of September 27, 2000, had you done
 13 so?
 14 A. It hadn't been formalized, no.
 15 Q. When you drafted your October 9, 2000, memo,
 16 did you have any indication that Tom Luster was going
 17 to not be on the project anymore?
 18 A. I don't remember when Tom left the project.
 19 I don't remember that date, but I don't think so.
 20 MR. EGLICK: Here is a substitute Exhibit
 21 184.
 22 Q. (BY MR. EGLICK) Looking at Exhibit 185, which
 23 we were still talking about. We'll get back to 184.
 24 Can you look at the second paragraph in section 1 of
 25 Exhibit 185 on the first page? Do you see it?

1 A. Yes.
 2 Q. And read the sentence that starts
 3 "consultant."
 4 A. "Consultant will report to Tom Luster and
 5 respond to his requests for technical consultation."
 6 So obviously at that time Tom was still on the project.
 7 Q. And you didn't have any indication he was
 8 leaving, did you?
 9 A. No.
 10 Q. Looking down to number 3.
 11 A. Yes.
 12 Q. Could you read the heading on number 3 and
 13 then the first two sentences into the record, please?
 14 A. "Continuity between design and
 15 implementation. We retain a strong interest in
 16 ensuring that the designers of the mitigation elements
 17 are present to guide successful installation. The
 18 mitigation ratios we negotiated with the Port are based
 19 in part on this assumption."
 20 Q. Now, is there something in the 401 as it was
 21 issued in September 2001 that addresses this issue?
 22 A. I don't think so.
 23 Q. And I can see you're reading ahead here. Let
 24 me ask you the question. In fact, on the next page of
 25 this Exhibit 185, you actually recommend that there be

1 something in the 401 to that effect, don't you?
 2 A. Yeah.
 3 Q. You're laughing. Why are you laughing?
 4 A. That was a pretty smart recommendation.
 5 Q. Why don't you read that recommendation into
 6 the record.
 7 A. "Recommendation: Given this, I recommend we
 8 craft a condition for the 401 that re-opens the
 9 negotiated mitigation ratios if the port chooses to
 10 select construction oversight/supervision that does not
 11 include the original designer team."
 12 Q. Now, we've already agreed there's nothing in
 13 the 401 that ecology issued that does this, is there?
 14 A. I don't think so, no.
 15 Q. Let's look down at number 4. I don't want to
 16 spend a lot of time on this, but given the efforts I've
 17 had to make to get things in this case, I'm kind of
 18 curious about this. You make a recommendation here,
 19 which I guess as you put it -- would you agree this is
 20 also in your words a pretty smart recommendation, this
 21 one that says "I suggested to Jan Cassin"? Can you
 22 read that into the record?
 23 A. Yes.
 24 Q. Go ahead.
 25 A. "I suggested to Jan Cassin" -- she works at

1 Parametrix.
 2 Q. And that's the port's consultants, right?
 3 A. She's one of them, yes. She works for Jim
 4 Kelley. -- "9-26-2000 that the Port make documents and
 5 maps available on the web."
 6 Q. Why don't you read the next sentence too.
 7 A. "Updated documents can be managed efficiently
 8 this way, and all parties with interest can have ready
 9 access."
 10 Q. Now, would you agree today that that still
 11 seems using your term like a pretty smart
 12 recommendation?
 13 A. I think that recommendation still stands,
 14 yes.
 15 Q. And was that ever implemented?
 16 A. No as far as I know.
 17 Q. Was that recommendation in part prompted by a
 18 concern that the documents be readily available to
 19 ecology staff for review without the need for
 20 transferring paper copies back and forth?
 21 A. No. It was more to make the documents
 22 available to the public.
 23 Q. Why were you concerned about that?
 24 A. Because the weekly public disclosure requests
 25 that we were getting did require a fair amount of our

1 time to respond to, and that was time that we couldn't
 2 spend working on the project.
 3 Q. Did the port ever tell you why they wouldn't
 4 adopt that recommendation you made?
 5 A. No.
 6 Q. Take a look if you would at number 7 on the
 7 second page of Exhibit 185. Do you see where the
 8 heading on that one is?
 9 A. Yes.
 10 Q. What's the heading say?
 11 A. "Cumulative impacts from SR 509 and South
 12 Access road."
 13 Q. Would it be accurate to say that -- well, why
 14 don't you go ahead and read into the record if you
 15 would this section and then the first bulleted point
 16 under it.
 17 A. Number 7, "Cumulative impacts from SR 509 and
 18 South Access road. Parametrix is operating under the
 19 assumption that if adequate mitigation is required for
 20 each of the projects in the golf course area" -- and in
 21 paren I say "regional stormwater facility at northwest
 22 ponds, SR 509/South Access, and SASSA," end paren,
 23 "then when considered jointly, the projects will not
 24 result in cumulative impacts. I can follow the logic
 25 of this to a point, but I remain concerned that such

1 assumption is not based on much of an analysis. I
 2 believe what is needed" -- I guess I should have said
 3 is one of the following.
 4 Q. And then what's the first bulleted point
 5 under your suggestion of what's needed?
 6 A. "A coordinated mitigation strategy between
 7 WSDOT, the Port, and the basin planning committee."
 8 Q. Now, let's just take that one. Did that
 9 happen to your knowledge?
 10 A. There were a fair number of meetings between
 11 ecology and DOT and the basin planning -- not the basin
 12 planning committee but King County, David Masters, who
 13 were working on that.
 14 Q. In fact, David Masters doesn't speak for the
 15 basin planning committee, does he?
 16 A. No. No, not at all.
 17 Q. Because the basin planning committee includes
 18 on it, for example, doesn't it, several independent
 19 cities that are incorporated?
 20 A. I believe so, yes.
 21 Q. Did you ever see a document that indicated
 22 that there was a coordinated mitigation strategy among
 23 DOT, the port, and the basin planning committee?
 24 A. No.
 25 Q. Now, your next bulleted recommendation, if

1 you could read that into the record.
 2 A. "A more detailed evaluation of the cumulative
 3 impacts, and an assessment of the mitigation provided
 4 for the port impacts in the basin."
 5 Q. Now, can you point to a document where this
 6 recommendation was fulfilled?
 7 A. The design drawings for SR 509 and the south
 8 access road were refined. What I mean by refined, they
 9 were -- they changed to avoid some of the wetland
 10 impacts that were considered as possible or potential
 11 at the time that I wrote this, so the design did
 12 change, and those drawings would have to be reviewed.
 13 But the natural resource mitigation plan also was
 14 updated to address some of this.
 15 Q. Now, is there a portion of the natural
 16 resource mitigation plan that provides what you call
 17 for here, which is a more detailed evaluation of the
 18 cumulative impacts and an assessment of the mitigation
 19 provided for the port impacts in the basin?
 20 A. I don't know. I'd have to look.
 21 Q. Well, when is the last time you looked at the
 22 natural resource mitigation plan?
 23 A. Just before the last -- before the
 24 certification was issued.
 25 Q. And when you looked at it then, was this

1 present in it, this more detailed evaluation of the
 2 cumulative impacts and an assessment of the mitigation
 3 provided for the port impacts in the basin?
 4 A. I think it did address some of the questions
 5 of the cumulative impact.
 6 Q. I want you to answer the question I'm asking,
 7 because you're making a very specific recommendation
 8 here, aren't you?
 9 A. Yes.
 10 Q. Is that specific recommendation fulfilled in
 11 the last NRMP that you looked at?
 12 A. I don't know.
 13 Q. And did you think to check that before you
 14 signed off on the NRMP, or did you not sign off on the
 15 NRMP? Maybe I should ask you that.
 16 A. No. I signed off on it.
 17 Q. So did you check to see if this
 18 recommendation had been fulfilled before you signed off
 19 on the last NRMP?
 20 A. I don't recall.
 21 Q. Well, isn't it true that at that point
 22 ecology was past the point where you could have done
 23 anything about it anyway because the decision had been
 24 made to issue the permit, the certification?
 25 A. Sorry. Say that again.

1 Q. Isn't it true that by the time you were
 2 reviewing the -- the last time you reviewed the NRMP,
 3 the decision had already been made to issue a
 4 certification?
 5 MS. MARCHICRO: Objection; no foundation.
 6 A. No. I disagree.
 7 Q. (BY MR. EGLICK) When was the last time you
 8 reviewed an NRMP?
 9 A. The last time I looked at it was just before
 10 we approved the 401, we issued the 401.
 11 Q. And how close to the issuance of the 401 was
 12 that?
 13 A. Within a week.
 14 Q. And you're saying that within a week of when
 15 it was issued there had not been a decision to issue a
 16 401 certification?
 17 A. That was the decision. The 401 is the
 18 decision.
 19 Q. Right. The 401 is the written embodiment of
 20 the decision; is that correct?
 21 A. That's correct.
 22 Q. But before a written embodiment of a decision
 23 is made, someone has to make the decision that it will
 24 be written with an approval in it, doesn't one,
 25 someone?

1 A. Yes.
 2 Q. Do you know when that occurred?
 3 A. It was a very dynamic and those are very
 4 dynamic times. I mean, there are a lot of things that
 5 are coming together all at once.
 6 Q. Do you know when that occurred?
 7 A. When it all came together?
 8 Q. When the decision was made to issue a 401
 9 certification approving the port application.
 10 A. I think it was made within a couple of weeks
 11 of writing it.
 12 Q. Prior to writing it?
 13 A. Yes.
 14 Q. And who wrote it?
 15 A. Who wrote the 401?
 16 Q. Yes.
 17 A. Ann Kenny.
 18 Q. And who made the decision?
 19 A. To? The decision was made by me for the
 20 wetlands element. It was made by Kevin Fitzpatrick for
 21 the stormwater and I believe the low flow. That rate
 22 asked us if we felt like we had reasonable assurance to
 23 issue the 401, so the decision was made when technical
 24 staff felt like we could make the decision.
 25 Q. And when you made that decision, did you sit

1 down and go over these remaining issues that you had
2 noted in your October 9, 2000, memorandum, which is
3 Exhibit 185?

4 A. No. And that's why I laughed when I said
5 that that was a smart recommendation, because in
6 hindsight, I wish that I had done that.

7 Q. Was there some time pressure in issuing the
8 401, Mr. Stockdale?

9 A. Yes.

10 Q. And how so? Was there some urgent business
11 you had to get on to so you had to get this 401 out?

12 A. This has been an urgent project for five
13 years.

14 Q. Well, what was the time pressure for issuance
15 of the 401, this 401?

16 A. The time pressure was getting -- at this
17 stage was making the written record that constitutes
18 the 401 all come together once we had agreed that it
19 was time to issue the 401.

20 Q. And you had no indication that there was
21 pressure in any other way to get the 401 issued?

22 A. There was other pressure, sure.

23 Q. What was that?

24 A. There was pressure from all sides.

25 Q. I'm asking you about pressure to get the 401

1 the governor's office.

2 Q. How did it --

3 A. It came from attorneys.

4 Q. How did it come from the governor's office?

5 A. Well, it came through knowing that they were
6 meeting with the governor's office, and it came from
7 hearing from the governor's office before I even got
8 back to my office after having a meeting at the port.
9 It came from the press. It came --

10 Q. Now, how can you hear from the governor's
11 office before you even get back to your office about a
12 meeting you had with the port? How would they even get
13 ahold of you?

14 A. Well, because they complained to the
15 governor's office within minutes of us leaving the
16 airport, and I was reached on a cell phone before I
17 even got back to the office.

18 Q. And what was the complaint?

19 A. Oh, I mean, it's a whole string of
20 complaints. It was a complaint about Tom Luster. It
21 was a complaint about me. I mean --

22 Q. But in August 2001 and July 2001, Tom Luster
23 wasn't working there anymore, was he?

24 A. No. When you asked me where the pressure
25 came from, it's been a pressure cooker for over three

1 certification issued.

2 A. There's been pressure from the port to issue
3 the certification for at least three years.

4 Q. Well, let's talk about the pressure that
5 occurred, if any, in July and August of 2001. We can
6 agree, can't we, the first certification was issued on
7 August 10, 2001?

8 A. That's correct.

9 Q. So was there any pressure in July 2001 to get
10 the 401 certification to approve the port project
11 issued?

12 A. Yes.

13 Q. And where did the pressure come from to get
14 that approval issued?

15 A. Well, the pressure was in -- there was
16 pressure from me that I generated for making sure that
17 I'm ready for the decision, and that includes making
18 sure that I have documents that I can approve and --

19 Q. I'll ask another question, then, because
20 maybe I'm not making myself clear. Apart from your own
21 pressure on yourself, where was the pressure coming
22 from?

23 A. Well, the pressure came from the port and --

24 Q. How did the pressure come from the port?

25 A. Well, it came in the press. It came through

1 years.

2 Q. Let's focus for a moment, though -- although
3 I'm very interested in the whole saga, but let's try to
4 take it in small, chewable bites. In July and August
5 2001, pressure -- and by pressure I don't mean whatever
6 pressure you have to do your job internally but what
7 pressure was coming from the governor's -- let me
8 finish the question, and that will help give you a
9 focus for your response. What pressure was coming from
10 the port?

11 A. What pressure was coming from the port --

12 Q. For issuance of the 401 approval.

13 A. Well, they were meeting with the governor's
14 chief of staff, who was then calling the director and
15 Ray Hellwig, and they wanted to know why we couldn't
16 issue the 401. I must tell you that ecology management
17 did a very good job shielding the technical staff from
18 the pressure in terms of making a decision that wasn't
19 right.

20 I mean, granted the pressure was there, and I
21 could see the effect that it was having on management,
22 but nonetheless, never was I asked by Ray Hellwig to
23 make a decision that I couldn't support, so that's --
24 it's important for you to understand that, yeah, the
25 pressure really got to me, but never did that pressure

1 make me make a decision that I felt like I couldn't
 2 support.
 3 Q. But then again, you never told Mr. Hellwig,
 4 did you, that you were against issuance of a 401 in
 5 July or August 2001, did you? Did you?
 6 A. Not in August of 2001.
 7 Q. And not in July of 2001, did you?
 8 A. No.
 9 Q. Now, what happened earlier when there was
 10 pressure from the port and someone indicated that they
 11 were not with the program on issuance of a 401 for the
 12 port? By with the program, I mean not in favor of
 13 issuance of the 401 at a particular time.
 14 MS. MARCHICRO: Objection; vague.
 15 MR. PEARCE: Objection; no foundation.
 16 A. I don't understand. What happened --
 17 Q. (BY MR. EGLICK) Well, let's go back to your
 18 description of an incident. You said you had a meeting
 19 with the port and before you got back to your office
 20 you had a call from the governor's office?
 21 A. Yeah. I got a call from Gordon White,
 22 because he wanted to know -- the governor's office was
 23 calling him, and they wanted to know what had happened.
 24 Q. And this was when you say you hadn't even
 25 gotten back to your office, so how much time had

1 not, I don't -- I never considered that.
 2 Q. Well, that's okay. Tom Fitzsimmons testified
 3 that she was, so you're in good company.
 4 Now, were you asked at any time whether Tom
 5 Luster should remain a member of the 401 team?
 6 A. I actually had concerns about Tom. I reached
 7 a point in our review of the project where I was
 8 concerned about Tom's objectivity in the process.
 9 Q. And the concern was that Tom was not agreeing
 10 with the ecology consensus that the project was
 11 approvable; is that correct?
 12 A. Tom wasn't -- Tom kept rehashing and bringing
 13 up issues that we had already resolved.
 14 Q. When you say we had already resolved, Tom was
 15 the 401 coordinator, was he not?
 16 A. Right.
 17 Q. And I take it in Tom's view, Tom was saying
 18 they were not resolved; is that correct?
 19 A. Tom was double-guessing technical issues that
 20 squarely fell in the realm of the stormwater engineer
 21 reviewing the project and not to him.
 22 Q. So it was a question of jurisdiction?
 23 A. He was also --
 24 Q. Is that correct? Is it a question of
 25 jurisdiction?

1 elapsed since you had left the meeting with the port?
 2 A. Twenty minutes.
 3 Q. And the complaint was what?
 4 A. Gordon wanted to know what happened at the
 5 meeting.
 6 Q. And why did he want to know?
 7 A. Because he didn't know how to answer the
 8 questions from the governor's office.
 9 Q. Now, were you in a position where you were
 10 asked for input on whether Tom Luster should remain on
 11 the 401 team? Do you know what I mean by 401 team?
 12 A. Uh-huh.
 13 Q. What do I mean?
 14 A. The 401 team included me and Kevin. Before
 15 Kevin it was Lisa --
 16 Q. Kevin Fitzpatrick?
 17 A. Kevin Fitzpatrick. And it included the
 18 county engineer. Now, there was an internal team that
 19 the county person didn't sit at, but it included either
 20 the immediate technical staff and Ray Hellwig and Joan.
 21 Q. Joan who?
 22 A. Joan Marchioro.
 23 Q. She was a member of ecology's 401 team?
 24 A. Well, Joan attended many of our meetings, so
 25 whether I could say she was a member of the team or

1 MR. PEARCE: Objection; argumentative. And
 2 you're not letting the witness answer the question.
 3 MR. EGLICK: I'm asking for the witness to
 4 answer my question before he moves on to another one.
 5 MR. PEARCE: You're not letting him answer
 6 because you don't enjoy the answer.
 7 MR. EGLICK: Roger, limit your objections to
 8 appropriate ones.
 9 A. The concern -- Tom --
 10 Q. Excuse me, Mr. Stockdale.
 11 MR. EGLICK: Could you read back my question,
 12 please?
 13 (The reporter read back as requested.)
 14 A. What do you mean by jurisdiction?
 15 Q. (BY MR. EGLICK) Well, you testified, did you
 16 not, that Tom Luster was not accepting, I think you
 17 said, technical staff's view on a particular issue, and
 18 I'm asking whether your testimony is that Mr. Luster
 19 was required to accept that view because he didn't have
 20 jurisdiction over that area of the 401.
 21 A. He also didn't have the expertise.
 22 Q. Well, answer my question first if you would.
 23 Are you saying it's a jurisdictional issue or some
 24 other answer?
 25 A. It's more than just jurisdictional.

1 Expertise is probably more important.
 2 Q. And are there particular issues that you can
 3 identify that Mr. Luster raised where he did not have
 4 expertise? I'm not asking for general topic areas but
 5 particular specific issues.

6 A. Well, there were issues about the
 7 relationship of the MPDES permit to the 401, and Tom
 8 was double-guessing the water quality program manager's
 9 decision on that, so there was an agency policy issue
 10 that Tom disagreed with, and he was trying to find a
 11 way to undermine the water quality program manager.

12 Q. Now, is that an issue that has to do with
 13 environmental or engineering expertise?

14 A. Absolutely.

15 Q. What environmental or engineering expertise
 16 goes into deciding the relationship between a 401
 17 certification and an MPDES permit?

18 A. I'm not a water quality engineer, so I'm not
 19 sure I can answer that.

20 Q. Well, you just told me that that doesn't --
 21 that that involves environmental expertise as opposed
 22 to something else, so I'm wondering if you can identify
 23 for me what it is, because it sounds very much to me
 24 like a jurisdictional issue, but I'm hoping you'll be
 25 able to explain your answer.

1 A. Well, like I said, Tom was inserting himself
 2 in areas where he did not have the expertise, and he
 3 was double-guessing technical staff.

4 Q. And by inserting himself, you mean Tom was
 5 asserting what the scope of review and responsibility
 6 of a 401 certification was in a way that was
 7 inconsistent with what others were saying was that
 8 scope; is that correct?

9 A. That's fair.

10 Q. And it was your view that as the senior 401
 11 coordinator for the statewide 401 program, that was an
 12 area outside of Mr. Luster's expertise; is that
 13 correct?

14 A. I'm not the senior 401 expert.

15 Q. No. Tom Luster was.

16 A. Right.

17 Q. And it was your view that in that capacity,
 18 the question of relationship between the 401 program
 19 and the MPDES permit program was an area outside his
 20 expertise; is that correct?

21 A. Yeah.

22 Q. So that's a specific area where Tom Luster
 23 was in your view raising inappropriate issues; is that
 24 correct?

25 A. That's correct.

1 Q. Now, we've talked to Katie Walter about this,
 2 but let me ask you. Was there any deadline set for
 3 drafting of a 401 approval in the summer of 2001?

4 A. I'm sure that there was a target date that we
 5 were working towards.

6 Q. And who set the deadline?

7 A. I think it was set by Ray in a meeting, one
 8 of the meetings that we had when we met and decided
 9 that we were ready to move forward.

10 Q. Was there any involvement in setting that
 11 deadline of the governor's office?

12 A. I don't think so.

13 Q. Do you know whether or not there was a
 14 meeting with the governor in which the port and ecology
 15 agreed on a deadline for issuance of a 401?

16 A. No, I don't.

17 Q. Would you know if there was?

18 A. If it was something that came up in a
 19 meeting, yes.

20 Q. Only if you attended the meeting, though;
 21 isn't that correct?

22 A. If I attended the meeting.

23 Q. Now, how did it happen that Katie Walter got
 24 picked to be the consultant to ecology on wetlands?

25 A. I picked her.

1 Q. And had you originally intended to pick
 2 someone else?

3 A. There was somebody else that I wanted to
 4 hire, yes.

5 Q. Who was that?

6 A. That was Dyanne Sheldon.

7 Q. And Dyanne Sheldon is a wetlands expert?

8 A. Yes.

9 Q. Why are you laughing?

10 A. Because she works for you.

11 Q. Well, she doesn't work for me, but in any
 12 event, do you have any reservation about her expertise
 13 as a wetlands person, scientist?

14 A. No, I don't.

15 Q. So she was your first choice; is that
 16 correct?

17 A. Yes.

18 Q. And the port told you they didn't want you to
 19 hire Dyanne Sheldon, didn't they?

20 A. That's correct.

21 Q. And then ecology didn't hire her, did they?

22 A. No, we didn't.

23 Q. You thought that was pretty bad that the port
 24 told you you couldn't hire her, didn't you?

25 A. Yes.

1 Q. But then you didn't hire her, did you?
 2 A. We weren't able to, no.
 3 Q. Now, what was the difference between Katie
 4 Walter and Dyanne Sheldon or Shannon & Wilson and
 5 Dyanne Sheldon that made Dyanne Sheldon your first
 6 choice?
 7 A. Well, to be honest, Dyanne -- I've known
 8 Dyanne longer than any other wetland consultant --
 9 Q. You worked with her at King County, didn't
 10 you?
 11 A. I did. And I've just known her for a long
 12 time. When we called -- we put out a bid to three or
 13 five consulting firms. When I sat down and I started
 14 thinking about who else to send it to, Katie was
 15 probably the second person that I thought of. Granted
 16 our -- we couldn't hire somebody who was currently
 17 working for the port or who had worked for the port on
 18 the project.
 19 MR. EGLICK: Could you read back the
 20 question, please?
 21 (The reporter read back as requested.)
 22 Q. (BY MR. EGLICK) I may have gotten you off the
 23 track there by interjecting that you worked with her at
 24 King County, but I still would like you if you would to
 25 address that question. What was the difference?

1 Q. To your knowledge, did they give a reason to
 2 anyone?
 3 A. They went, I believe, to the governor's
 4 office to complain about this saying --
 5 Q. To complain about what?
 6 A. That we wanted to hire Dyanne Sheldon. And
 7 they said that they felt that she was biased.
 8 Q. Have you ever worked on a project before
 9 where ecology's choice of a wetland scientist ends up
 10 being a matter taken to the governor's office?
 11 A. No.
 12 Q. Why don't you take a look at Exhibit 185.
 13 We've talked about this some, but could you look at
 14 page 81 bottom right corner? It's page 4 of the
 15 exhibit as the exhibit is internally numbered. Then do
 16 you see the second bulleted point under number 10?
 17 A. Yes.
 18 Q. Could you read that into the record, please?
 19 A. "Some of the wetlands downslope of the
 20 proposed MSE wall remain wet through the summer. Page
 21 62 IA," which I believe is the implementation
 22 agreement, "however, proposes a hydrology performance
 23 standard that will assure that hydrology is maintained
 24 for the remaining wetland downslope of the wall only to
 25 mid-April. I have spoken with Jim Kelley about this,

1 A. I would say that they're both equally
 2 qualified in terms of giving us the kind of expertise
 3 that we were looking for and moving the natural
 4 resource mitigation plan from where it was at the time
 5 that I left to the time that the certification was
 6 issued.
 7 Q. There's no difference in your mind of the
 8 service that either would provide in terms of strength
 9 of knowledge, ability, analysis, or anything else?
 10 A. I don't think so. I mean, Dyanne has more
 11 experience overall in the field, but I'm not sure that
 12 that limited Katie's ability to provide us with what
 13 she did.
 14 Q. Dyanne has more experience in the field. You
 15 mean as being a wetland scientist; is that correct?
 16 A. That's correct.
 17 Q. Now, you're saying Dyanne Sheldon was your
 18 first choice. You're saying the port told you they
 19 didn't want to hire Dyanne Sheldon; is that correct?
 20 A. Uh-huh.
 21 Q. The port was paying the bill, wasn't it?
 22 A. Uh-huh.
 23 Q. Did the port give a reason as to why it did
 24 not want you to hire Dyanne Sheldon?
 25 A. Not to me.

1 and he agrees that this standard needs more attention."
 2 Q. Now, let's go to July 2001, and you're
 3 telling me, you know, you reviewed the NRMP and so on
 4 and the 401 before it was issued; is that right?
 5 A. Yes.
 6 Q. So how did you fix this one, this issue that
 7 you raised in December of 2000?
 8 A. It doesn't look like we fixed it.
 9 Q. Did you change your mind?
 10 A. No. I just don't think that we extended it
 11 through the summer.
 12 Q. And you had review of the 401 before it was
 13 issued?
 14 A. Yes.
 15 Q. And it was a very deliberate review --
 16 A. Yeah. This is my mistake.
 17 Q. We've come up with a number of these now,
 18 haven't we?
 19 MS. MARCHIORO: Objection; argumentative.
 20 MR. EGLICK: Okay. I'll withdraw the
 21 question.
 22 (Deposition Exhibit No. 186 was marked for
 23 identification.)
 24 Q. (BY MR. EGLICK) Looking back at 185 for a
 25 minute, Mr. Stockdale, if you would before we go to

1 identifying 186. Just thinking about what we've been
2 talking here, when the decision was made to draft the
3 401 certification in 2001, this past summer, did you
4 raise any issues where you said, no, this has not been
5 addressed, we can't issue this 401 because something
6 has not been addressed?

7 A. Did I raise any issues?

8 Q. Yes. In July and August 2001.

9 A. At that point, I felt like the issues had
10 pretty much been resolved.

11 Q. Is it the case that today here as we go over
12 your October 9, 2000, memo it turns out that there's
13 some issues that you identified very early on that had
14 not been resolved in July and August 2001? Is that
15 correct?

16 A. Well, there's two issues that we've
17 identified that through my lack of attention didn't
18 make it into a specific 401 condition.

19 MR. EGLICK: Can you read back the question,
20 please?

21 (The reporter read back as requested.)

22 A. Yes.

23 Q. (BY MR. EGLICK) And, in fact, when you were
24 telling me about there was no pressure to say yes, for
25 example -- you recall you made a little bit of a

1 statement about that; is that correct?

2 A. Correct.

3 Q. You don't really know what result would have
4 occurred if you had said wait a minute, there's some
5 things outstanding here, because you never said that,
6 did you?

7 A. I never said what?

8 Q. Wait a minute, there are some issues
9 outstanding here.

10 A. I said that -- I did not say that in July. I
11 said that for about three years before that.

12 Q. And I'm asking about July and August 2001.
13 You never said that, did you?

14 A. No.

15 Q. Let's look at Exhibit 186. Can you identify
16 it?

17 A. This is an e-mail that I sent to Ray Hellwig
18 and Jeannie Summerhays on October the 30th, year 2000.

19 Q. Now, I notice that this e-mail has on it
20 "deliberative memo." Do you see that?

21 A. Uh-huh.

22 Q. Now, this was about the contract with Dyanne
23 Sheldon that ultimately didn't go through; is that
24 right?

25 A. We didn't have a contract with Dyanne.

1 Q. Well, I notice -- what's the first four words
2 or six words of this memo say?

3 A. It says, "I recommend the contract with
4 Dyanne be open-ended."

5 Q. So this was a reference to a contract with
6 Dyanne Sheldon; is that correct?

7 A. It's in reference to a contract that we
8 wanted to sign with Dyanne, but we didn't have a
9 contract with her.

10 Q. Now, looking at the top of the memo, I notice
11 here it says "deliberative memo." Do you see that?

12 A. Uh-huh.

13 Q. Did you put that on here?

14 A. It looks like I did.

15 Q. And where it says "protected"?

16 A. Uh-huh.

17 Q. Did someone tell you to put that on here?

18 A. No.

19 Q. Well, was this memo deliberative about the
20 contract with Dyanne Sheldon?

21 A. Yes.

22 Q. And so that's why you put it on?

23 A. Yes.

24 Q. So your understanding was if you were writing
25 out what should be the nature of the contract with

1 Dyanne Sheldon, then you could label it as deliberative
2 and protect it from public disclosure?

3 A. That's probably what I thought at the time.

4 Q. I see you have a recommendation here. Do you
5 see this second paragraph in this memo?

6 A. Yes.

7 Q. Could you read that into the record, please?

8 A. "I also recommend that a firewall be put in
9 place between Dyanne and the Port. Dyanne should be
10 insulated from the Port to the same extent that Ecology
11 employees are."

12 Q. So what's a firewall?

13 A. I was concerned that because we were asking
14 the port to pay for Dyanne that they would use that as
15 a way to try to influence her review.

16 Q. And, in fact, later on didn't it happen that
17 when Katie Walter had to do more than was expected and
18 her allocation of money ran out that ecology had to go
19 back and ask the port if they could keep Katie Walter
20 on?

21 A. I believe Ann Kenny went to the port and
22 asked for more money, yes.

23 Q. So the port held the purse strings; is that
24 correct?

25 A. Well, we were asking the port to pay for it,

1 to pay for the review.
2 Q. The port then, is it correct to say, held the
3 purse strings for the review by the outside wetlands
4 consultant who took over a lot of your duties; is that
5 correct?

6 A. I'm not sure I understand what you mean by
7 purse strings.

8 Q. The port had control of whether or not money
9 would be allocated to the tasks?

10 A. They had control over whether they agreed
11 with us or not to hire -- to -- well, yeah, they paid
12 for that review.

13 Q. And they could have said, We're not paying
14 for Katie Walter anymore, could they have not?

15 A. I guess they could have.

16 Q. So what firewall was ultimately put in place?

17 A. Well, in the case of Dyanne, it wasn't
18 necessary.

19 Q. Well, because you weren't able to hire her;
20 is that correct?

21 A. That's correct.

22 Q. So I was asking and you're smiling. I think
23 you know what I was getting at here. What firewall was
24 put in place with regard to Katie Walter?

25 A. We let Katie know that she wasn't working for

1 the port, she was working for us, and to let us know if
2 she had independent contact from the port that we
3 weren't made aware of. That wasn't necessary with
4 Katie.

5 Q. So that's the only thing that in your mind --
6 I mean, that's what in your mind constituted a
7 firewall?

8 A. Well, in that situation, yes.

9 Q. Katie Walter was aware, wasn't she, that the
10 money was coming from the port?

11 A. Yes.

12 Q. And, in fact, there came a time when she had
13 to wait for ecology to get permission from the port to
14 have Katie Walter continue with her review; isn't that
15 correct?

16 A. There was a time when the contract needed to
17 be amended.

18 Q. And is that a nice way of saying the port
19 needed to agree to give more money so Katie Walter
20 could continue working?

21 A. Yes.

22 MS. MARCHIORO: Why don't we take a break.
23 (Recess taken.)

24 Q. (BY MR. EGLICK) You said you had worked with
25 Dyanne Sheldon at King County?

1 A. Yes.

2 Q. And would you agree that she has substantial
3 regulatory experience?

4 A. From her work at King County in terms of
5 working for a local government, yes.

6 Q. And wasn't she the first wetland scientist to
7 work in a local government regulatory program in the
8 state?

9 A. I think she was.

10 Q. And she more or less helped create that
11 program at King County, didn't she?

12 A. Yes.

13 Q. And for many years, she was the senior
14 wetland scientist there, wasn't she?

15 A. She was.

16 Q. Now, does Katie Walter have comparable
17 regulatory experience?

18 A. Katie does a fair amount of on-call
19 consulting for local governments, so she helps Pierce
20 County and several other cities administer their local
21 ordinances.

22 Q. The question I asked, though, was -- and I
23 won't have it read back because I think I can repeat it
24 closely enough -- does Katie Walter have similar to
25 Dyanne Sheldon regulatory experience, similar to Dyanne

1 Sheldon's?

2 A. Probably not as much, no.

3 Q. Here's a document I'd like you to identify.
4 (Deposition Exhibit No. 187 was marked for
5 identification.)

6 Q. (BY MR. EGLICK) Showing you what has been
7 marked as Exhibit 187 to your deposition. Can you
8 identify it?

9 A. This is a letter to me from Dyanne Sheldon
10 dated November 21, 2000, that is her proposal to us to
11 perform the natural resource mitigation plan review.

12 Q. And when you say it's her proposal, are you
13 referring to the attachments to the cover letter which
14 are all part of Exhibit 187?

15 A. When you say attachment --

16 Q. Well, the first page of Exhibit 187 is a
17 cover letter signed by Dyanne Sheldon. Then there are
18 pages that go on that have headings such as
19 qualifications, project experience --

20 A. That's correct.

21 Q. -- list of projects. So when you were
22 identifying this as her proposal, you were referring to
23 the packet in its entirety or just to the front page?

24 A. No. All of it.

25 Q. Could you take a look at page 6 of the

1 proposal, and Ms. Sheldon's numbering is on the bottom
 2 right. Do you see page 6?
 3 A. Yes.
 4 Q. By the way, you had said that Dyanne Sheldon
 5 works for ACC; is that correct?
 6 A. I believe so, yes.
 7 Q. She was -- at the time she made her proposal
 8 to ecology, she wasn't working for ACC to your
 9 knowledge, was she?
 10 A. No.
 11 Q. So that came after ecology --
 12 A. That came after, yes.
 13 Q. So ecology had the first opportunity to bring
 14 her into this delightful experience; is that correct?
 15 A. Yes.
 16 Q. But I'll give you the option of saying that
 17 you don't agree with the part of my question that
 18 called it delightful as an experience, right, because
 19 you're smiling.
 20 Take a look at page 6. Do you see the first
 21 full paragraph on that page?
 22 A. It starts with "based on the work."
 23 Q. Yeah.
 24 A. Uh-huh.
 25 Q. Could you read the second sentence in that

1 paragraph?
 2 A. "Based on my knowledge of the project to
 3 date, it appears that the indirect long-term
 4 hydrological impacts to the remaining wetlands and
 5 stream resources will be a key issue point."
 6 Q. Go ahead. Read the next sentence too if you
 7 would.
 8 A. "In addition, the technical feasibility of
 9 the proposed mitigation efforts will require intense
 10 scrutiny."
 11 Q. And then could you read also the last
 12 sentence of this paragraph into the record?
 13 A. "At issue of course, is the feasibility of
 14 the design to infiltrate surface water generated on the
 15 fill of the runway plateau into the wetlands left at
 16 the toe of the plateau embankment in a manner and rate
 17 which will replicate pre-fill plateau conditions in the
 18 wetlands and down slope streams."
 19 Q. Now, do you have any or did you have any
 20 disagreement with Ms. Sheldon's identification of these
 21 as some of the key issues that would have to be
 22 resolved on the port's application?
 23 A. No. I agree.
 24 Q. Do you know whether Ms. Walter or the Shannon
 25 & Wilson -- I understand Ms. Walter works with Shannon

1 & Wilson?
 2 A. She does.
 3 Q. Did that proposal that Shannon & Wilson
 4 submitted identify as specifically what some of the key
 5 issues would be on further review of the port
 6 application?
 7 A. That is one of the issues that she looked at.
 8 Q. My question was did the Shannon & Wilson
 9 proposal identify with the same specificity --
 10 A. Yeah. I don't know if it did or not.
 11 Q. Who else besides ecology saw the proposals
 12 submitted by persons wanting to be hired by ecology to
 13 be its wetland reviewer for the port's 401
 14 certification application?
 15 A. So who else reviewed these submittals?
 16 Q. Other than persons in ecology.
 17 A. I don't think anybody else did.
 18 Q. Well, then, how on earth would the port have
 19 known that Dyanne Sheldon was one of the applicants?
 20 A. Because they found out from ecology that I
 21 was recommending that we hire Dyanne.
 22 Q. How?
 23 A. I can only guess that somebody mentioned it
 24 to somebody at the port.
 25 Q. But it wasn't you?

1 A. Well, actually, I don't know. It's possible
 2 that I did.
 3 Q. You understand why I'm asking. If this was
 4 an internal ecology decision, I'm trying to understand
 5 how the port would even be in a position to know who
 6 the candidates were, who a finalist was to be able to
 7 complain to the governor. Do you understand the area
 8 of inquiry, then?
 9 A. I believe, yes.
 10 Q. So do you know whether or not the proposals
 11 from the various applicants -- there were five, weren't
 12 there?
 13 A. There were three or five, and I'm trying to
 14 remember who they all came from. I don't remember
 15 that. I try not to remember everything. Now, the
 16 concern --
 17 Q. Could you answer the question that's on the
 18 floor? I'll tell you what. I'll repeat it. I'm
 19 trying to find out -- I think you've answered no, but I
 20 want to be sure -- whether or not the proposals were
 21 somehow given to the port.
 22 A. No. I doubt they were, because they were
 23 sent to me directly.
 24 Q. But then again, you are testifying that the
 25 port became aware of who had submitted the proposals.

1 A. Well, there's a timing issue here, because I
2 had proposed -- now, this is November 21, and I had
3 proposed -- initially this memo -- I had proposed to
4 hire Dyanne back in late September, early October, and
5 that was before I was aware of the contracting
6 requirements that we had to go through.

7 I at the time didn't even know that we had to
8 put it out and request proposals from other people, so
9 the port knew that we wanted to hire Dyanne before we
10 even asked for these proposals, so it was before we
11 received these proposals that they were aware that we
12 wanted to hire Dyanne, and I still fully intended to
13 hire Dyanne.

14 Q. Even after the proposals were received?

15 A. Well, what led to me not being able to hire
16 Dyanne is that she disqualified herself in this
17 proposal.

18 Q. And that was by what?

19 A. Because her bid -- and she was dead on. She
20 was over the \$18,000 limit that we asked for. She came
21 in at \$30,000, so she was accurate in terms of telling
22 us what she thought it was going to take to do the
23 work, but under the contracting provisions, we had to
24 limit it at \$18,000 or under \$20,000 for the first
25 round, so much to my dismay, Dyanne disqualified

1 herself.

2 Q. Well, you're saying she disqualified herself
3 in the sense that she said, look, you and I both know
4 this is going to cost more than ecology has said it
5 will cost?

6 A. And she put it in writing, so I couldn't
7 accept this bid.

8 Q. And, in fact, when you said dead on, what you
9 mean is that in fact Dyanne was right about what it
10 would cost; is that correct?

11 A. Absolutely. Actually, it was more than that.
12 I think we ended up paying Shannon & Wilson more than
13 that.

14 Q. And, in fact, what you did for Shannon &
15 Wilson ultimately was to allow them to break it up and
16 do an initial contract and then amendments to get
17 around the limit; is that correct?

18 A. That's what ended up happening, yeah.

19 Q. Did ecology ever tell Dyanne Sheldon we'll
20 break it up for you, submit a proposal now for an
21 initial phase and then if we need to ask for more we
22 can?

23 A. That's what I told Dyanne to do, yes.

24 Q. Before or after she made her submittal?

25 A. Before. She acknowledges that in the second

1 paragraph.

2 Q. Why don't you show me that.

3 A. It says, "I realize that you've provided an
4 estimate of \$18,000 to complete this work, and under
5 other circumstances I might have modified my estimate
6 of hours to conform within that cost limit."

7 Q. Okay. Now, I thought what you just testified
8 to was that you had advised that the \$18,000 was not to
9 complete the work but that could be just a first phase,
10 and I thought what you testified to was then that she
11 acknowledges that she had been advised of that in this
12 letter. Now, I'm reading this or listening to you read
13 this section, and it's a reference to \$18,000, quote,
14 to complete this work, end quote, so is your testimony
15 still that Dyanne Sheldon was advised that in the end
16 the work completed could cost more than \$18,000?

17 A. Yes.

18 Q. But it's not reflected as you had testified
19 it was in this letter, is it?

20 MS. MARCHICRO: Objection; mischaracterizes
21 the witness's testimony.

22 A. Well, what I said was what I read here, and I
23 said that she acknowledged that we had told her that we
24 were looking for an initial submittal for \$18,000.

25 Q. (BY MR. EGLICK) And the initial submittal was

1 to, quote, complete this work, end quote. Do you see
2 that, the sentence you just read?

3 A. Those are Dyanne's words.

4 Q. And did you ever get back to Dyanne Sheldon
5 and say, well, no, we didn't mean you would have to
6 complete the work at \$18,000? Did you?

7 A. What we had to do was to talk to somebody --
8 one of the contract managers, and the contract manager
9 -- I don't recall who that was -- looked at the
10 spreadsheet and said that because the spreadsheet shows
11 the proposal at \$30,150 that that disqualified Dyanne
12 from the proposal because there were other proposals
13 that were for less.

14 Q. Did you answer my question, though,
15 Mr. Stockdale? Would you like to have it read back?

16 A. I thought I answered the question.

17 MR. EGLICK: Could you read back the
18 question, please?

19 (The reporter read back as requested.)

20 A. I did talk to Dyanne about the submittal
21 after she sent it to me.

22 Q. (BY MR. EGLICK) And did you tell her that she
23 would not have to complete the work for \$18,000 but
24 that additional monies could be requested and obtained
25 from the port?

1 A. Yes. That was the understanding all along.
 2 She understood that.
 3 Q. Well, are you referring as you previously
 4 were to her letter in this exhibit as your support for
 5 that?
 6 A. I don't quite understand your question.
 7 Q. Okay. Let me ask it another way. Look at
 8 Exhibit 187. There's a sentence that you read to me
 9 that says, quote, I realize that you've provided an
 10 estimate of \$18,000 to complete this work, and under
 11 other circumstances I might have modified my estimate
 12 of hours to conform within that cost limit, end quote.
 13 So that conveys, does it not, that it's her
 14 understanding that the completion of the work is to be
 15 for \$18,000, a cost limit? Is that correct?
 16 A. That is what that reads.
 17 Q. Take a look if you would at this next
 18 document we'll have marked.
 19 (Deposition Exhibit No. 188 was marked for
 20 identification.)
 21 Q. (BY MR. EGLICK) Exhibit 188 to your
 22 deposition, can you identify it?
 23 A. This is the November 27, 2000, proposal for
 24 consulting services that Sam Casne at Shannon & Wilson
 25 sent to me.

1 Q. Now, remember I asked you -- and this is a
 2 proposal that was ultimately accepted, wasn't it?
 3 A. That's correct.
 4 Q. I take it the Shannon & Wilson was acceptable
 5 to the port?
 6 A. The port did not have a say in that
 7 determination.
 8 Q. Well, you didn't get any call from the
 9 governor's office on Shannon & Wilson, did you?
 10 A. We told the port that we were going to hire
 11 Dyanne Sheldon regardless of how they felt about it.
 12 Q. Could you answer my question, please,
 13 Mr. Stockdale?
 14 A. I did not get a call from the governor's
 15 office about hiring Shannon & Wilson.
 16 Q. Remember I asked you to take a look at a
 17 portion of Exhibit 187, which was Dyanne Sheldon's
 18 description of what she thought were some key issues?
 19 Remember it was the indirect long-term hydrological
 20 impacts to the remaining wetlands and stream resources,
 21 and she also referred to the feasibility of the design
 22 to infiltrate surface water generated on the fill of
 23 the runway plateau into the wetlands left at the toe of
 24 the plateau embankment? Do you recall all that?
 25 A. Yes.

1 Q. Now, I'm wondering if you can point out to me
 2 in Exhibit 188 where there was any comparable
 3 identification -- by the way, you agreed those were key
 4 issues, didn't you?
 5 A. Yes. I identified those as key issues for
 6 Dyanne.
 7 Q. Can you show me in Exhibit 188 anywhere that
 8 those are addressed in the same specific terms?
 9 A. Well, the first place that I see where that
 10 is mentioned is on page -- what page number do I give
 11 you?
 12 MS. MARCHICRO: Use this reference number.
 13 THE WITNESS: Is that the reference number,
 14 014? Is that correct?
 15 A. It's a list of tasks by times. "In
 16 particular, evaluate proposal to discharge water at
 17 base of embankment/wall to provide baseflow support to
 18 remaining wetlands on Miller and Walker creeks."
 19 Q. (BY MR. EGLICK) Go ahead. Read the rest of
 20 it if you would.
 21 A. "Evaluate hydrologic impacts from borrow
 22 sites 3 and 4. Consult with Ecology's Water Quality
 23 hydrogeologist, Dave Garland, if necessary."
 24 Q. And you're saying this is comparable to the
 25 specific reference made in Dyanne Sheldon's proposal?

1 A. What do you mean by comparable?
 2 Q. This is a similar identification of a key
 3 issue?
 4 A. No. It's laid out differently.
 5 Q. Other than being laid out differently, are
 6 you saying it's equivalent in terms of the importance
 7 given to the issue?
 8 A. No. I don't think it highlights it in the
 9 same way.
 10 Q. In fact, how many hours for what you've
 11 identified as a key issue and you've agreed that
 12 Ms. Sheldon was correct to identify as a key issue --
 13 how many hours does this proposal say is going to be
 14 devoted to key issue?
 15 A. Two hours.
 16 Q. In fact, isn't that about the lowest -- I
 17 guess there are a couple of one-hour tasks, but isn't
 18 that about the lowest amount of hours that's devoted to
 19 any task?
 20 A. Yes.
 21 Q. And you're not receding, are you, from your
 22 testimony that what Ms. Sheldon identified as a key
 23 issue, are you?
 24 A. No.
 25 (Deposition Exhibit No. 189 was marked for

1 identification.)
 2 Q. (BY MR. EGLICK) Showing you what has been
 3 marked as Exhibit 189 to your declaration. Can you
 4 identify it?
 5 A. This is a letter written by Ann Kenny to a
 6 Mr. Bill Garrity, executive director of CECW, and I
 7 don't recall what that stands for. It's some sort of
 8 an engineering group, professional group.
 9 (Deposition Exhibit No. 190 was marked for
 10 identification.)
 11 Q. (BY MR. EGLICK) Showing you what has been
 12 marked as Exhibit 190. Can you identify it?
 13 A. This is a letter to me from the Consulting
 14 Engineers Council of Washington, Mr. Bill Garrity,
 15 dated November 22, 2000.
 16 Q. Does that refresh your recollection what CECW
 17 is?
 18 A. It does.
 19 Q. What is it?
 20 A. Consulting Engineers Council of Washington.
 21 Q. And, in fact, according to this exhibit,
 22 Mr. Garrity is executive director of the CECW, isn't
 23 he?
 24 A. That's correct.
 25 Q. Do you have any idea of how the CECW happened

1 to be writing to you about this matter of review of the
 2 NRMP for the third runway?
 3 A. No.
 4 Q. Have you ever received a letter from the CECW
 5 before about any consulting contract?
 6 A. No.
 7 Q. Was this a total surprise to you when you
 8 received this letter?
 9 A. Yes.
 10 Q. Did you ever talk to Mr. Garrity?
 11 A. No. I didn't. I don't know if Ann did or
 12 not.
 13 Q. What was your understanding of what his
 14 objection was, if any, to the bid process?
 15 A. Well, apparently this RCW stipulates that
 16 RFPs can't include a cost estimate in the bid document,
 17 I guess.
 18 Q. In fact, why don't you look on the second
 19 page of the Exhibit 190, and if you could read that
 20 first sentence of the last paragraph into the record,
 21 I'd appreciate it.
 22 A. "We suggest amending the request for proposal
 23 to eliminate any requirement for estimates of cost or
 24 fees, so that the apparent successful proposer is
 25 selected based on qualifications as required by the

1 statute."
 2 Q. Now, did you amend the proposal as
 3 Mr. Garrity had requested citing RCW -- well, citing
 4 the RCW?
 5 A. No.
 6 Q. Is that what Exhibit 189 is, then, is a draft
 7 letter -- was that draft letter later put into final
 8 responding to Mr. Garrity?
 9 A. I believe this letter went out.
 10 Q. So Mr. Garrity said, no, don't pick based on
 11 some estimate that you put in the request for proposal,
 12 pick based on qualifications, and there's a statute
 13 that requires it, and ecology got back to Mr. Garrity
 14 and said no; is that right?
 15 A. Well, we said -- and the letter states what
 16 we said. We checked with an attorney general on this
 17 -- that RCW -- "we agree that RCW 39.80 applies when
 18 governmental agencies want to hire architectural,
 19 engineering, and land surveying service. However, in
 20 this case, Ecology is seeking the services of a
 21 Professional Wetland Scientist to evaluate the impact
 22 of the Port of Seattle's project to wetlands and their
 23 biological functions. We are not looking for the
 24 services of an architect, an engineer, a land surveyor,
 25 or a landscape architect."

1 Q. So the distinction that you made -- and this
 2 was, I assume, you as part of the decision-making group
 3 at ecology; is that correct?
 4 A. You mean that's reflected in this exhibit?
 5 Q. Yes.
 6 A. 189?
 7 Q. Yes.
 8 A. Well, this letter was written by Ann Kenny
 9 after she consulted with Leslie Seffern, who is an
 10 Assistant Attorney General.
 11 Q. What kind of folks do hydrogeology review in
 12 terms of the profession? What degree do they have?
 13 A. What do they have?
 14 Q. You're a hydrogeologist. What's your degree
 15 in? Is it liberal arts?
 16 A. No.
 17 Q. What's it in?
 18 A. I imagine that it's in one of the physical
 19 sciences.
 20 Q. And you're probably an engineer, aren't you?
 21 A. Well, you could be.
 22 Q. Were any of the people who Shannon & Wilson
 23 said were going to work on the project engineers? Why
 24 don't you take a look if you would at page -- if you
 25 look on the right-hand side of page 019 of Exhibit 188

1 and read the second sentence, the first column of that
2 page under qualifications for this project. Do you see
3 that?

4 A. Yes.

5 Q. What does that second sentence say?

6 A. "We have wetland scientists, fisheries
7 scientists, wildlife biologists, hydrologists, and
8 engineers to support the Department of Ecology's review
9 of the Natural Resource Mitigation Plan."

10 Q. And, in fact, some of the persons who did the
11 work are engineers, aren't they?

12 A. Scott Bender is a hydrogeologic -- I don't
13 know what his title is, but I believe he is a
14 hydrogeologist.

15 Q. Well, do you see in the list of his
16 qualifications where it refers to his project
17 engineering?

18 A. Yes.

19 Q. Now, did you go back and look and see whether
20 the folks who were going to work on this project who
21 submitted proposals involved or -- excuse me -- were
22 engineers, whether from Shannon & Wilson or some of the
23 other firms?

24 A. No.

25 (Deposition Exhibit No. 191 was marked for

1 identification.)

2 Q. (BY MR. EGLICK) Showing you what has been
3 marked as Exhibit 191. Can you identify it?

4 A. This is an e-mail that I wrote to Gail Terzi
5 and Jonathan Freedman on October 11, year 2000.

6 Q. Why don't you read the middle paragraph into
7 the record, please. You're laughing again. Why is
8 that?

9 A. I just made a comment about how e-mail is
10 forever. "The Port is whining about me wanting to be
11 excused from the project. We are in the process of
12 choosing a consultant to take over my involvement, and
13 they don't like who we want to hire. They want to
14 quote-unquote help us choose. The nerve."

15 Q. You were saying they want to, quote, help,
16 quote, us choose?

17 A. That's right.

18 Q. So the word "help" in your e-mail is in
19 quotes, is that correct, just for the court reporter's
20 benefit there?

21 A. That's right.

22 Q. Now, what do you mean they want to help us
23 choose, they being the port?

24 A. The port. They wanted a role in choosing who
25 we selected.

1 Q. And how did you know that?

2 A. I imagine through discussions that I had with
3 Ray Hellwig.

4 (Deposition Exhibit No. 192 was marked for
5 identification.)

6 Q. (BY MR. EGLICK) Showing you what has been
7 marked as Exhibit 192 to your deposition. Can you
8 identify it?

9 A. These are notes that I took at a meeting on
10 March 22, 2001.

11 Q. And can you tell who attended the meeting
12 from the notes?

13 A. Ann Kenny, Kelly Whiting, Katie Walter.

14 Q. Now, looking at the last page of Exhibit 192,
15 which is the third page. Does that work for you too?
16 It's the third page?

17 A. Yes.

18 Q. Could you read the first three lines on that
19 page?

20 A. "What is the life-span of geotextile?"

21 Q. That's one line.

22 A. "No provision for channel dynamics?" Third
23 line, "What if maintenance is required?"

24 Q. So what is this reference to geotextile?

25 A. This reference is to the geotextile membrane

1 that has been proposed to be used at the Vacca Farm.

2 Q. And that's in the relocated stream channel?

3 A. Miller Creek.

4 Q. And for what distance approximately is that
5 going to be used?

6 A. I'm not sure.

7 Q. Well, is it --

8 A. Seven to 900 feet.

9 Q. So a significant length; is that correct?

10 A. Yes.

11 Q. And what's the purpose of the geotextile?

12 A. The geotextile is to -- the design at the
13 Vacca Farm is for some peat to be removed to provide
14 compensatory floodplain storage, and as that peat is
15 shaved down to the right elevation and the creek is
16 relocated through that peat, the geotextile membrane is
17 going to be laid down to serve as a permeable barrier
18 between that new face of peat that is exposed and the
19 gravel, the stream gravel that is going to be placed on
20 top of it.

21 Q. Now, what's permeable mean?

22 A. Permeable as compared to impermeable in that
23 permeable it's going to pass water.

24 Q. Does it matter whether it's permeable or not,
25 this geotextile membrane?

1 A. That's what it's designed to do.
 2 Q. To be permeable?
 3 A. To be permeable.
 4 Q. Why does it matter if it's permeable or not?
 5 A. Well, that barrier -- you don't want that
 6 barrier to become an aquatard.
 7 Q. A what?
 8 A. An aquatard.
 9 Q. Can you explain for the record what an
 10 aquatard is?
 11 A. A seal through which water either doesn't
 12 flow through or has a very hard time flowing through.
 13 Q. What difference does it make if it becomes an
 14 aquatard?
 15 A. Mind you, I'm not a hydrogeologist.
 16 Q. Right. But why don't -- you said, I believe,
 17 in your testimony you don't want it to become an
 18 aquatard, so I'll ask you why don't you want it to
 19 become an aquatard? Go ahead and answer.
 20 A. I couched that term so that you understand
 21 that I'm not giving you an engineering -- it's not
 22 based on engineering training. My understanding is
 23 that one of the things that you don't want -- the
 24 reason you don't put down visqueen or plastic or
 25 another permeable material is that you want the creek

1 water that becomes -- the shallow groundwater that the
 2 creek exerts in the new marsh plain, you want that
 3 water to move back and forth through the restored
 4 floodplain.
 5 Q. What happens if it doesn't?
 6 A. Well, it wouldn't if you put down visqueen,
 7 and so you would disconnect that volume of water from
 8 the floodplain.
 9 Q. What's wrong with that?
 10 A. Well, what we're trying to do is to mimick as
 11 much as possible a natural system.
 12 Q. So how much research did you do on the
 13 geotextile fabric that's supposed to make sure that
 14 these problems don't occur?
 15 A. I spoke to Jim Kelley and to Paul Fendt about
 16 the material.
 17 Q. Now, Paul Fendt works for the port; is that
 18 right?
 19 A. That's right.
 20 Q. And Jim Kelley works for the port?
 21 A. That's correct.
 22 Q. So your research consisted of speaking to
 23 them about the geotextile; is that correct?
 24 A. That's correct.
 25 Q. Have you ever had any experience with the

1 particular geotextile in this kind of use?
 2 A. No.
 3 Q. Are you aware of anything in the literature
 4 with regard to the geotextile proposed for use by the
 5 port?
 6 A. Yes, but not -- I mean, I know that it's
 7 being used, but I don't have any experience with it.
 8 Q. Well, when you say you know it's being used,
 9 my question was anything in the literature concerning
 10 use of this geotextile in this kind of application?
 11 A. My understanding is that it has been used in
 12 other areas, and it's been reported in the literature.
 13 Q. Have you read the literature?
 14 A. No, I haven't.
 15 Q. Have you ever found anything in the
 16 literature yourself?
 17 A. I haven't looked for it.
 18 Q. So your understanding comes not from
 19 something you've read but from what?
 20 A. Well, as I said, in discussions that I've had
 21 with Paul Fendt and with Jim Kelley.
 22 Q. So they told you it was somewhere in the
 23 literature?
 24 A. I believe Paul referred to several specific
 25 projects where it's been used.

1 Q. And did you ask for anything to give you any
 2 detail on that?
 3 A. No.
 4 Q. Your third line here on -- by the way, you're
 5 calling it here geotextile. I've seen geotextile at
 6 Home Depot that supposedly lets the water in but won't
 7 let the weeds live. Have you seen that kind of
 8 material at Home Depot?
 9 A. That's not what we're talking about, but I
 10 have, yes.
 11 Q. So what are we talking about here other than
 12 geotextile? Do you have a name for this material?
 13 A. Well, the name is -- it's in the natural
 14 resource mitigation plan. I don't remember what it's
 15 called, but it has a specific trade name.
 16 Q. Did you ever talk to the manufacturer?
 17 A. No, I didn't.
 18 Q. Did you ever read Dyanne Sheldon's comments
 19 on her research?
 20 A. I did.
 21 Q. And did you do any follow-up after reading
 22 her comments?
 23 A. I did.
 24 Q. After reading her comments, did you talk to
 25 the manufacturer?

1 A. No.

2 Q. Is there any particular project that you can
3 identify where the geotextile proposed for use by the
4 port has been used in a like manner?

5 A. No.

6 Q. Now, you have this question here, "What if
7 maintenance is required?" It's the third line on the
8 third page of Exhibit 192.

9 A. Correct.

10 Q. Now, I assume you're talking about -- and
11 please tell me if I'm wrong -- you're talking about
12 maintenance with regard to the geotextile; is that
13 correct?

14 A. Yes.

15 Q. So the question is presumably what happens if
16 the geotextile, for example, doesn't -- what's the
17 word? Is there a verb? -- permeate water anymore?
18 Would that be the correct way of saying it?

19 A. Yeah. If it becomes clogged.

20 Q. Why would you even worry about whether a
21 geotextile would become clogged?

22 A. Well, it's not going to become clogged any
23 more than what the peat is already clogged in terms of
24 its transmissivity for water.

25 Q. Answer if you would, Mr. Stockdale, the

1 question I asked, which was why would you even worry if
2 the geotextile would become clogged?

3 A. Well, if it wasn't able to transmit water at
4 the rate -- for example, at a rate that you're
5 expecting it to and, let's say, that presents a design
6 problem or another problem, then obviously the material
7 isn't going to meet your needs.

8 Q. And the stream Miller Creek is not going to
9 have the water filtered, is it, where it's going over
10 the geotextile?

11 A. Can you -- filtered?

12 Q. Is there going to be some mechanism before
13 the creek water goes over the geotextile that's going
14 to filter out things that might clog the geotextile?

15 A. Is it going to be filtered? I don't -- is
16 there going to be pretreatment of --

17 Q. Yeah. Before the water goes over the
18 geotextile.

19 A. No. The water is -- there's going to be, I
20 think, 12 or 16 inches of gravel that is placed over
21 the geotextile.

22 Q. But that wasn't my question. My question is
23 is the water going to be treated so that it doesn't
24 have materials in it of any kind before it goes over
25 the geotextile?

1 A. What water are you referring to?

2 Q. The water that will flow through the creek.

3 A. Well, the water that flows through the creek
4 is not being pretreated right now.

5 Q. So this will be typical creek water?

6 A. Yes.

7 Q. And typical creek water is not free of
8 debris, is it?

9 A. No.

10 Q. Now, is this geotextile being put in in such
11 a way that without disruption to Miller Creek you could
12 rip out whatever is covering it, take out the
13 geotextile, and vacuum any clogs out or anything like
14 that?

15 A. If you needed to get in and either replace it
16 or clean it, you'd be working in the creek.

17 Q. So it would be disruptive, wouldn't it?

18 A. I would say so.

19 Q. And a setback to mitigation, wouldn't it?

20 A. Uh-huh. Yes.

21 (Deposition Exhibit No. 193 was marked for
22 identification.)

23 Q. (BY MR. EGLICK) Showing you what has been
24 marked as Exhibit 193 to your deposition. Can you
25 identify it?

1 A. This is an e-mail that I sent to Joan
2 Marchioro on July 19, 2001, which is a forward of Jim
3 Kelley, an e-mail that he sent to me on that same day.

4 Q. Now, is this e-mail discussing that court
5 case that we talked about several hours ago at the
6 start of your deposition about port acquisition of
7 property adjacent to Vacca Farm?

8 A. Yes. This is that parcel number 92.

9 Q. If you look down where Mr. Kelley has
10 apparently, is this correct, sent you an e-mail on July
11 19 at 6:52 a.m.? Do you see where it says "high
12 priority" in the e-mail to you?

13 A. Uh-huh.

14 Q. And then could you read into the record what
15 he tells you?

16 A. It says, "The judge ruled in favor of the
17 Port on the condemnation case, recognizing that with
18 the exception of Corps regulations, prior converted
19 croplands were wetlands under local and state
20 regulations, and would reduce the value of Parcel 92."

21 Q. Now, parcel 92 is that area that's now part
22 of what we've loosely called the Vacca Farm mitigation
23 area?

24 A. It's part of -- yes.

25 Q. And then if you would look at your response

1 e-mail at 9:38 a.m. on the same day, July 19, 2001. Do
2 you see that above?

3 A. Yes.

4 Q. Do you see the third -- well, the second line
5 you're sending a copy of Mr. Kelley's e-mail on to Joan
6 Marchioro; is that right?

7 A. That's correct.

8 Q. And could you read the second paragraph and
9 the third paragraph of your e-mail to her?

10 A. The second paragraph?

11 Q. Yeah.

12 A. "Here's a brief summary of the decision. I
13 asked Jim Kelly to try to get me the written decision."

14 Q. I thought you weren't following the case.
15 Apparently you were enough to ask Jim Kelley to get you
16 a copy of the written decision?

17 A. I guess so.

18 Q. Then let's read the next paragraph, and if
19 you could read that into the record.

20 A. "Funny how the Port's attorneys first argued
21 with our authority to regulate prior converted
22 croplands, then used that regulatory authority to argue
23 for reduced property valuation in a condemnation
24 proceeding."

25 Q. Now, when you referred to the port's

1 attorneys having, quote, used that regulatory
2 authority, quote, were you referring to ecology's
3 regulatory authority over the property in question as a
4 wetland?

5 A. No. I was referring to our regulatory
6 authority under RCW 90.48 to regulate prior converted
7 croplands as waters of the state.

8 Q. Do you see where Mr. Kelley said once again,
9 quote, prior converted croplands were wetlands under
10 other local and state regulations, end quote?

11 A. Yes.

12 Q. And he's saying that's what the judge ruled
13 in this case?

14 A. That's correct.

15 Q. As far as you know, does ecology have a
16 disagreement with the judge's ruling?

17 A. That's consistent with our interpretation of
18 RCW 90.48.

19 Q. So the area that we're talking about here,
20 the property in question, in ecology's view once again
21 is wetlands; is that correct?

22 A. That prior converted croplands are wetlands,
23 yes.

24 Q. So the area in question that we're talking
25 about here, which is the area that is now part of the

1 Vacca Farm mitigation area, is wetlands; is that
2 correct?

3 A. I don't know how much of that parcel is
4 wetland, but I know that the issue had to do with
5 whether or not the prior converted cropland
6 determination was made on that parcel by the Corps of
7 Engineers, whether or not that took that area out of
8 regulation as far as state and local regulations or
9 not.

10 Q. And under state and local regulations, that
11 area is considered wetlands; is that correct?

12 A. That's correct. Now, I should add that it is
13 considered wetlands if it meets the definition of a
14 wetland according to the state delineation manual.

15 Q. And, in fact, the port's argument was that it
16 did, wasn't it?

17 MR. PEARCE: Objection; lack of personal
18 knowledge.

19 A. I presume so.

20 Q. (BY MR. EGLICK) And, in fact, that's what Jim
21 Kelley had called you about originally was to get some
22 help on making that argument; is that correct?

23 A. Actually, I wasn't called by Jim Kelley about
24 that.

25 Q. It was Noradyne, did you say?

1 A. I was contacted by an attorney for the port
2 who was handling the condemnation. She wanted me to
3 attend the condemnation case, and I -- that's when I
4 refer in this e-mail about begging out of it, because
5 that's not my role, and I was contacted by Kevin
6 Featherston, who was the consultant for Novadyne.

7 Q. But that was why you were contacted, wasn't
8 it, because the port wanted assistance in making the
9 case that the area in question was wetlands, is that
10 correct, because it would reduce the valuation for
11 condemnation?

12 MS. MARCHIORO: Objection; asked and
13 answered.

14 A. They wanted to know -- they wanted me to put
15 into writing, which I did, what the state's regulatory
16 authority is over prior converted croplands.

17 Q. (BY MR. EGLICK) So what was funny? Isn't
18 that the word you use in your e-mail?

19 A. (Nodding head).

20 Q. What do you mean by funny?

21 A. Well, I recall having a rather heated
22 argument with the port attorney at the Vacca Farm
23 whether or not ecology even had the authority to
24 regulate prior converted croplands.

25 Q. And you took the position that ecology did

1 have the authority to regulate them as wetlands; is
 2 that correct?
 3 A. That's been our position for quite a while,
 4 that's correct.
 5 Q. And which port attorney did you have the
 6 heated argument with?
 7 A. Last name is Pors, Tom Pors, P-o-r-s.
 8 Q. And then what you found funny was that the
 9 port -- and tell me if I'm wrong about this -- the port
 10 took that authority tht ecology had and used that to
 11 argue for a lower valuation in a condemnation case?
 12 Isn't that what you found funny?
 13 A. I would find that funny, yes.
 14 (Deposition Exhibit No. 194 was marked for
 15 identification.)
 16 Q. (BY MR. EGLICK) Showing you what has been
 17 marked as Exhibit 194 to your deposition. Can you
 18 identify it?
 19 A. This is an e-mail with an attached memo. It
 20 is originally from Katie Walter to Ann Kenny, and then
 21 it was forwarded from Ann Kenny to me on August the
 22 1st, 2001.
 23 Q. Do you know why Katie Walter was frantic?
 24 See where it says she's frantically working on the 401?
 25 Do you see that?

1 A. It says, "I am frantically getting more
 2 things on paper."
 3 Q. And that's a reference to the 401, isn't it?
 4 MS. MARCHIORO: Objection; calls for
 5 speculation.
 6 A. It says, "I am frantically getting more
 7 things on paper," so she's frantically trying to get
 8 things on paper.
 9 Q. What things? Take a look at the next page if
 10 you've got any question. Isn't this a draft -- a memo
 11 about draft 401 conditions?
 12 A. 401 conditions.
 13 Q. So I still have the question.
 14 MS. MARCHIORO: The document speaks for
 15 itself. Objection.
 16 Q. (BY MR. EGLICK) Do you know why she was
 17 frantic?
 18 A. No.
 19 Q. Did it seem odd to you at the time that she
 20 said she was frantic?
 21 A. I feel like that quite often.
 22 Q. Please answer my question.
 23 A. Is it odd that she would feel frantic?
 24 Q. Did it seem odd to you at the time that she
 25 said she was frantically trying to get things on paper?

1 A. Well, this is about ten days before we issued
 2 the 401, so, no, it probably wasn't odd that she was
 3 feeling frantic.
 4 Q. Was she trying to meet a deadline?
 5 A. Probably.
 6 Q. And what was that deadline?
 7 A. Well, if the deadline was to get the 401 out
 8 by the date that we did.
 9 Q. You started your response with an if. Is
 10 that the end of your answer?
 11 A. I believe I finished that answer, yes.
 12 MR. EGLICK: Could you read back the
 13 response, please?
 14 (The reporter read back as requested.)
 15 Q. (BY MR. EGLICK) Does that complete your
 16 answer?
 17 A. Your first question was did it strike you odd
 18 that she was frantic, I believe, right?
 19 Q. Do you want me to have the question read back
 20 again?
 21 A. Could you be more clear so that I'm not
 22 dancing around your words?
 23 Q. I'd be happy to. All you need to do is let
 24 me know.
 25 A. I'm trying.

1 Q. Let's look at the half an answer you gave.
 2 Was the deadline to get the 401 out by the date that
 3 you did?
 4 A. We were obviously working towards a decision
 5 point, and we had asked Katie to put together some
 6 draft 401 conditions.
 7 Q. Was the deadline to get the 401 out by the
 8 date that you did?
 9 A. I don't know. I don't recall there being a
 10 drop dead deadline. There may have been.
 11 (Deposition Exhibit No. 195 was marked for
 12 identification.)
 13 Q. (BY MR. EGLICK) Showing you what has been
 14 marked as Exhibit 195 to your deposition. Can you
 15 identify it?
 16 A. These are notes that I took on September 7,
 17 2001.
 18 Q. So this was after the August 401 was issued
 19 but before the September 401 was issued?
 20 A. Yes.
 21 Q. See on the bottom right corner -- and I take
 22 it this was a meeting with -- your notes of a meeting
 23 with persons regarding the 401 or are these notes of
 24 conversations?
 25 A. It may have been a phone conversation.

1 Q. Do you see where it says "Jim Kelley/Paul
2 Fendt"?

3 A. Yes.

4 Q. Those are two folks who work for the port as
5 consultants?

6 A. Uh-huh.

7 Q. You're saying you think these are notes of a
8 phone conversation?

9 A. Yes.

10 Q. Do you see the line that says
11 "preconstruction monitoring," and then what does it say
12 after that?

13 A. "Bi-monthly November through May."

14 Q. What's that a reference to?

15 A. It means hydrologic monitoring that will
16 occur twice a month in the months November through May.

17 Q. And what's preconstruction mean?

18 A. Before construction.

19 Q. Now, did the word "preconstruction" make it
20 into the monitoring condition in the 401 issued in
21 September?

22 A. No. I recall that there was a question about
23 what we meant by a condition that addressed monitoring,
24 hydrologic monitoring.

25 Q. And the word "preconstruction" was stricken,

1 wasn't it?

2 A. I believe the question that was asked of us
3 was if that condition was met --

4 Q. Mr. Stockdale, my question was the word
5 "preconstruction" was stricken, wasn't it?

6 A. I believe so.

7 Q. And as of September 7, the word
8 "preconstruction" was still present in your notes on
9 what the condition would be, wasn't it?

10 A. It is in my notes, yes.

11 Q. Do you see the line where it says -- is this
12 what it says, "Can't come up with a threshold with one
13 year of data"? Do you see that in your notes?

14 A. Uh-huh. That's correct.

15 Q. What is that a reference to?

16 A. Well, there must have been some discussion
17 about how much monitoring would be necessary to develop
18 a threshold of some sort.

19 Q. And what does it mean when you say can't come
20 up with a threshold with one year of data?

21 A. I don't know. It's sort of cryptic, isn't
22 it? It depends on what threshold you're trying to
23 establish.

24 Q. Is threshold another way of saying baseline?

25 A. You could use that.

1 Q. Have you started drafting your prefile
2 testimony yet for the Pollution Control Hearings Board?

3 A. Had I at this time?

4 Q. Have you?

5 A. My prefile -- no, I haven't.

6 Q. Are you aware that you --

7 THE WITNESS: That's what you and I were
8 talking about today, Joan? I can't talk to her.

9 A. No. I haven't started drafting it. I want
10 to make sure I know what you mean by testimony.

11 Q. (BY MR. EGLICK) It's prefile testimony for
12 the Pollution Control Hearings Board hearing.

13 A. No. I haven't started drafting it.

14 Q. Are you familiar with a publication
15 Compensating for Wetland Losses under the Clean Water
16 Act, copyright 2001 by the National Academy of
17 Sciences?

18 A. Yes, I am.

19 Q. And that's, isn't it, a study of what works
20 in terms of wetland mitigation under the Clean Water
21 Act?

22 A. Yes.

23 Q. And is it something you've read?

24 A. I've read quite a bit of it.

25 Q. Is there any particular part of it that you

1 think is poorly analyzed?

2 A. No.

3 Q. So this is something that you would consider
4 a useful reference in your field?

5 A. Yes.

6 Q. Have you reviewed -- I may have asked you
7 this briefly earlier, but have you reviewed the
8 Pollution Control Hearings Board stay decision?

9 A. Yes.

10 Q. And its analysis with regard to wetlands?

11 A. Yes.

12 Q. And are there particular parts of that
13 decision with which you disagree in terms of the
14 wetlands analysis? I won't ask you about other areas.

15 A. Yes.

16 MR. EGLICK: What I'd like you to do, then --
17 and I think it's previously admitted. I have a note
18 here that says this is Exhibit 141. I'm surprised it's
19 so late in the game. Does that ring a bell with any of
20 the other counsel?

21 Q. (BY MR. EGLICK) Why don't you take a look at
22 the decision if you would, and if you could just
23 identify for me the portions that you disagree with
24 with regard to wetlands.

25 A. Actually, the way that this is written, this

1 is a legal argument, and I'm not qualified to disagree
2 with it. I probably was reading into it something that
3 is not there.

4 Q. Well, are there any -- certainly this is a
5 legal decision, but there are some factual predicates
6 to it with regard to wetlands, and I'm asking whether
7 with regard to the factual predicates there is anything
8 that you disagree with with regard to the wetlands
9 portion of the decision.

10 A. No.

11 Q. And you've looked through the wetlands
12 portion of the decision and you're comfortable with
13 that response?

14 MS. MARCHIORO: Objection. That's not the
15 witness's testimony.

16 MR. EGLICK: No. I'm asking whether he's
17 looked through the wetlands portion of the decision and
18 he's comfortable with his response that he just gave.
19 I'm not asking him whether he's comfortable with the
20 outcome the board mandated.

21 Q. (BY MR. EGLICK) Do you understand that,
22 Mr. Stockdale?

23 A. Yes.

24 Q. I'm basically giving you a chance to tell me
25 that you're now going to look over the factual

1 predicates a second or third time and tell me there's
2 one that you disagree with.

3 A. One of the issues that we're going to be
4 addressing is the whole question of accepting riparian
5 buffer restoration in lieu of wetland impacts, and I
6 think that that's not really a factual issue that the
7 board has ruled on.

8 Q. Why don't you tell me who we is.

9 A. Ecology.

10 Q. And you're saying you're going to be
11 addressing in your testimony to the board the issue you
12 just identified?

13 A. Well, I anticipate that's going to come up,
14 sure.

15 Q. And explain again if you would perhaps in a
16 little bit more detail the issue that you're referring
17 to that you anticipate will come up in your testimony.

18 A. Well, the board goes through and lays out the
19 mitigation package in terms of ratios. For example, on
20 page 12 at line 10, appellants have shown a likelihood
21 of success on the merits that out-of-basin mitigation
22 and upland buffer enhancement may not meet federal
23 Clean Water Act standards of no degradation of
24 beneficial uses. Appellants have shown a likelihood of
25 success of showing the current mitigation plan does not

1 degrade beneficial uses within the basin proposed for
2 the filled mountains.

3 So one of the questions that's going to come
4 up is how given that that's what they have concluded,
5 how it is that ecology certified that the mitigation
6 package does in fact protect beneficial uses.

7 Q. And you were referring to some focus your
8 testimony is going to have on riparian wetlands?

9 A. Did I say riparian wetland or did I say
10 riparian forest, buffer, whatever -- no. Not riparian
11 -- well, riparian corridor.

12 Q. And explain what exactly your position is on
13 that.

14 A. My position on what?

15 Q. On that question of how ecology happened to
16 issue a certification in light of riparian corridor
17 issues.

18 A. Well, we accepted a mitigation package that
19 has a significant element of riparian corridor
20 enhancement as a form of mitigation and the
21 reconnection of the fragmented habitat that currently
22 exists in that reach of Miller Creek.

23 Q. And is that going to be the justification for
24 the acceptance, the reconnection of fragmented habitat,
25 in your testimony?

1 A. Is that the only justification?

2 Q. Is that one of them?

3 A. Well, that's one of the elements that we
4 considered in our decision, yes.

5 Q. So what other elements are you going to
6 convey in your testimony to the board were part of the
7 justification for accepting the port's proposal with
8 regard to wetland?

9 A. Well, I'm going to address the value of
10 riparian corridor restoration in an urban environment
11 and the value that has for the aquatic resources in a
12 basin.

13 Q. And any other issues that you're going to
14 address in your testimony concerning the rationale for
15 the port's -- for ecology's acceptance of the port's
16 wetland plan?

17 A. Well, my previous declaration addressed what
18 I felt were the environmental benefits that were being
19 proposed in terms of the overall benefit to Miller
20 Creek, and so that -- one of the things that that
21 didn't include is the literature that addresses the
22 value of replacing and restoring riparian corridors in
23 terms of the functions that that vegetation provides.
24 It's very similar to the role that a forested wetland
25 would provide within that corridor.

1 Q. What literature are you referring to?
 2 A. Well, there's quite a bit. There's actually
 3 more literature on riparian functions than there is
 4 wetland functions.
 5 Q. What literature in particular are you
 6 referring to?
 7 A. Well, there's quite a bit of literature that
 8 is coming out of the Center for Stream Site Studies at
 9 the University of Washington. There's a National
 10 Academy of Sciences report. The Smithsonian Institute
 11 provided a very extensive bibliography on riparian
 12 systems, and that catalogued several hundred key
 13 articles. There's --
 14 Q. Are there particular articles that you have
 15 relied upon either in the decision that was made or in
 16 your preparation for testimony to the PCHB?
 17 A. There are some key documents, yes, that I've
 18 read.
 19 Q. What are they?
 20 A. I'd have to pull them out of my file. I
 21 don't recall the title or the author.
 22 Q. And you have them in your file with regard to
 23 the 401 application by the port?
 24 A. Yes, I do.
 25 Q. We haven't seen them, so if these are things

1 you have in your port 401 --
 2 A. Okay. They're not in my port 401 file. It's
 3 part of my library. I have a very extensive library.
 4 Q. Can you identify any of these articles,
 5 documents, publications?
 6 A. Well, for example, the bibliography by
 7 Cordell with the Smithsonian Institute provides several
 8 hundred references that have to do with riparian
 9 ecosystems.
 10 Q. Well, I'm sure it does, but I guess the
 11 question is are you going to support your testimony to
 12 the board by referring to a bibliography of several
 13 hundred articles or are you going to refer to
 14 particular articles in that bibliography?
 15 A. No. I'll refer to particular articles.
 16 Q. And which ones will they be?
 17 A. Well, like I said, right now they don't come
 18 to mind.
 19 Q. Did you have any articles in mind when the
 20 401s were issued for the port's certification
 21 application?
 22 A. That was part of the basis on which we
 23 accepted riparian restoration.
 24 Q. Did you have any particular articles in mind
 25 when the 401 decisions were issued by the Department of

1 Ecology?
 2 A. Well, particular articles. I have articles
 3 in my library that I've read and that I used to support
 4 the argument on which part of our decision was based.
 5 Q. And can you identify those articles?
 6 A. I will identify those articles.
 7 Q. I'm asking whether you can today.
 8 A. Today -- I just said that I don't know if the
 9 Chris May article addresses that, for example. There's
 10 an article by Kevin Featherston, research that he did
 11 out on the rain forest. There's a lot of literature,
 12 but I can't tell you which one specifically addressed,
 13 for example, the role of riparian forest to the
 14 contribution of dissolve organic matters.
 15 Q. So is it correct, then, to say that you
 16 didn't attempt to identify those articles prior to the
 17 issuance of the 401? Is that correct?
 18 A. Not for purposes of referencing it in a
 19 bibliography.
 20 Q. But you're going to for purpose of your
 21 testimony go back and see if any of the articles listed
 22 in this bibliography you referred to will support
 23 ecology's position; is that correct?
 24 A. I do have articles that support the position.
 25 Q. And just to be clear, you say you do have

1 articles that support ecology's position, but you
 2 cannot now identify them; is that correct?
 3 A. That's correct.
 4 Q. But you're going to try to go back and
 5 identify them before you testify to the board; is that
 6 correct?
 7 A. Yeah. I think it would -- yes.
 8 Q. But you didn't try to identify them before
 9 the 401 decisions were issued, did you?
 10 A. No, I didn't.
 11 Q. Is there any other issue that you will be
 12 raising in your testimony that you haven't identified
 13 here? You've talked about riparian corridors. You've
 14 mentioned a couple of other things. Is there any other
 15 issue that you will be raising in your testimony before
 16 the board?
 17 A. Not that I can think of.
 18 Q. Just a couple of wrap-up questions here. Is
 19 a WRIA -- does that term ring a bell with you?
 20 A. Water resource inventory area.
 21 Q. Is that the same thing as a watershed in
 22 terms of water experts talk about a watershed? Is WRIA
 23 the same thing as how a scientist would identify a
 24 watershed?
 25 A. It can be. It depends at what scale you're

1 talking about.
 2 Q. Well, is a WRIA a scientific designation or
 3 an administrative designation?
 4 A. It's based on a watershed boundary, so that's
 5 a scientific determination.
 6 Q. Well, maybe I'm not asking the question
 7 correctly, but does a WRIA always have boundaries that
 8 are co-extensive with a particular watershed's
 9 boundary?
 10 A. There can be several watersheds within a
 11 water resource inventory area.
 12 Q. And a water resource inventory area is a
 13 concept established by legislation, is it not?
 14 A. I believe so, yeah.
 15 Q. And is a basin in water talk so to speak the
 16 same as a watershed?
 17 A. Well, there could be -- again, it depends on
 18 the scale that you're talking about, because you can --
 19 Pigeon Creek in northwest Everett is a basin. It's a
 20 watershed. It's also part of the Puget Sound trough.
 21 I mean, it depends on what scale you're
 22 talking about, and that's one thing that's confusing
 23 about how people define watersheds and catchments and
 24 basins is it depends on the scale. You can have a
 25 watershed that's ten square miles and it can be a

1 thousand square miles. They both can be watersheds.
 2 Q. Is a basin always co-extensive with a
 3 watershed?
 4 A. It can be.
 5 Q. Is it a --
 6 A. You can also have several basins within a
 7 larger watershed.
 8 Q. And is a WRIA always co-extensive with a
 9 basin?
 10 A. Well, I'm thinking. In King County, for
 11 example, the Green River basin, King County broke the
 12 Green River basin into several subbasins. They each
 13 can be considered a watershed or a basin.
 14 Q. Individually?
 15 A. Individually.
 16 Q. Do you recall that there is a hydrologic
 17 standard in the 401 -- I think actually it was changed
 18 from August to September 2001 401 -- that talks about
 19 requiring groundwater within ten inches of the surface
 20 in certain wetlands?
 21 A. Right.
 22 Q. Do you recall that?
 23 A. Yes, I do.
 24 Q. And that's supposed to be a standard to
 25 monitor whether there's been an impact on one of these

1 wetlands that's supposed to be protected under the 401
 2 certification; is that correct?
 3 A. Well, that standard would measure whether or
 4 not the wetland boundary has shifted as a result of the
 5 project.
 6 Q. Would that standard measure whether there was
 7 hydrologic impact on the wetland?
 8 A. Not the standard itself, because measuring
 9 whether you have hydrology at ten inches or not is not
 10 going to tell you whether there's been impact.
 11 Q. Aren't there some wetlands that are
 12 identified as having flowing and standing water?
 13 A. Yes.
 14 Q. So if you've got this ten-inch standard for
 15 checking the soils and you get an answer about whether
 16 there's water in that ten inches of soil, that doesn't
 17 really tell you whether or not there's been an
 18 alteration in a wetland that used to have flowing and
 19 standing water, does it?
 20 A. Well, one thing is to have flowing water.
 21 Another thing is to have standing water. Are you
 22 saying that the wetland has flowing and standing water?
 23 Q. Either one. What I'm asking is whether
 24 checking to see whether there's water ten inches down
 25 gives you any assurance that there's either flowing or

1 standing water where there used to be.
 2 A. No. You would have to base that on more than
 3 one observation of the depth of the groundwater.
 4 Q. Well, if you made five observations of the
 5 depth of the groundwater and you found there was water
 6 within ten inches of soil, would that tell you whether
 7 there was flowing or standing water where there used to
 8 be?
 9 A. Well, if there's flowing water, you're going
 10 to see it, and if there's standing water, you're also
 11 going to see it.
 12 Q. Is there some standard in the 401
 13 certification that addresses determining as part of
 14 monitoring whether or not where there used to be
 15 flowing or standing water there still is in the same
 16 way?
 17 A. Whether it's flowing or standing -- that's
 18 not language that we used in the certification.
 19 Q. What I'm getting at is -- and maybe I'm not
 20 asking it in a proper way -- is presumably if there are
 21 wetlands -- and I understand, for example, there are
 22 several wetlands out there, you would agree, wouldn't
 23 you, that are now typified for significant parts of the
 24 year by flowing or standing water?
 25 A. Or parts of wetlands.

1 Q. Would you agree with that?
 2 A. Sure.
 3 Q. What is there in the 401 condition that
 4 assures that -- in the 401 conditions that assure that
 5 that condition will continue?
 6 A. I don't think there is one.
 7 Q. Isn't there a difference between a wetland
 8 that has flowing and/or standing water and a wetland
 9 that doesn't?
 10 A. I can think of many differences, yes.
 11 Q. And aren't there some differences in terms of
 12 value?
 13 A. Again, let's not get into the value argument.
 14 We need to talk about wetland function.
 15 Q. Aren't there differences in terms of
 16 function?
 17 A. Yes.
 18 Q. And isn't one of the purposes of 401
 19 certification to prevent degradation of wetland
 20 function?
 21 A. That's correct.
 22 Q. And to maintain the typical characteristics
 23 that have been there before?
 24 A. That's correct. Well, not always what's been
 25 there before, not in a mitigation wetland.

1 Q. Well, is it an acceptable outcome under a 401
 2 certification for a wetland that has been typified in
 3 the past by having at significant times flowing or
 4 standing water to no longer have it post-certification,
 5 post-project construction?
 6 A. Well, it depends on what portion of the
 7 wetland you're talking about, because I can think of
 8 wetlands on Miller Creek that are near the creek or
 9 part of the creek depending on the time of the year
 10 that have flowing or standing water and where the earth
 11 of the wetland is higher up topographically rarely is
 12 connected to the creek directly, so it depends on where
 13 in the wetland you're talking about. Presumably you're
 14 talking about the edge of the wetland.
 15 Q. Well, are there any wetlands or any portions
 16 of wetlands at the airport site where it would not be
 17 an acceptable outcome to have what have previously been
 18 areas of flowing or standing water no longer be
 19 characterized by flowing or standing water?
 20 A. I would need to look at what wetland you're
 21 talking about, because I don't want to say yes or no
 22 without having more information.
 23 Q. Well, was that looked at before the 401
 24 conditions were issued?
 25 A. Was the question of flowing or standing

1 water --
 2 Q. And maintaining those wetland characteristics
 3 considered before the 401 was issued?
 4 A. We had extensive discussions with Parametri:
 5 about the issue of wetlands downgradient from the big
 6 wall.
 7 Q. My question, though, was was the issue of
 8 maintaining flowing and standing water characteristics
 9 in site wetlands considered before the 401 was issued?
 10 A. Yes.
 11 Q. And my question is, are there conditions in
 12 the 401 which will maintain those characteristics?
 13 A. The performance standard if you look at the
 14 monitoring requirement doesn't measure for that.
 15 Q. My question is, are there conditions in the
 16 401 which will maintain those characteristics?
 17 A. Of which particular wetland?
 18 Q. Any wetland that might have a characteristic
 19 of flowing or standing water.
 20 A. The whole goal of the 401 is to protect the
 21 wetlands that are not being affected by the project, so
 22 I'm trying to understand your question without just
 23 saying yes or no, because I can think of many different
 24 situations where I could say yes and some where I could
 25 say no.

1 Q. Well, point if you would, then, to a
 2 condition regarding wetlands in the 401 from September
 3 that is directed toward maintaining flowing or standing
 4 water condition in on-site wetlands.
 5 A. Well, I believe I've already answered that
 6 there isn't a condition in the 401 that addresses
 7 flowing or standing water.
 8 Q. And you've also, I think, said you needed
 9 some identification of what wetlands might have flowing
 10 or standing water; is that correct?
 11 A. No. You said -- I don't want to get into
 12 this you said, he said, kind of thing, but it depends
 13 on which wetland you're talking about, because some
 14 don't have flowing or standing water.
 15 Q. And for the ones that do, the question is is
 16 there any condition in the 401 which maintains that
 17 characteristic for those wetlands, and I think your
 18 answer is no.
 19 A. That's correct. I don't think we addressed
 20 that in the 401.
 21 Q. Can you explain to me what this sentence
 22 means? It's on page 5, paragraph 13 of your
 23 declaration. Quote, wetland enhancement by its very
 24 definition results in the improvement of a suite of
 25 wetland functions (primarily habitat) at the expense of

1 wetland acreage. Enhancement can therefore result in
 2 the loss or diminishment of acreage-based functions
 3 such as water quality improvement, end quote.
 4 A. What exhibit number is that?
 5 Q. I think that's 172.
 6 A. Page 5?
 7 Q. Paragraph 13. It's the two sentences on
 8 lines 16 through 19.
 9 A. Oh, okay. And your question is what?
 10 Q. What does that mean? I can break it down
 11 more if you'd like. I had trouble getting through that
 12 one.
 13 A. Wetland enhancement is an activity -- let's
 14 say you take a degraded reed canary grass pasture.
 15 It's an area that was a wetland and continues to be a
 16 wetland, but its vegetation has been removed and/or
 17 grazed. Let's say you build a 7-Eleven on the corner
 18 of that field and the mitigation is to enhance what's
 19 left, so you've shrunk the wetland in acreage, but
 20 you've bumped up the level of function on the remaining
 21 wetland.
 22 So some wetland functions -- for example,
 23 small mammal habitat or pasturine bird habitat,
 24 probably to some extent primary productivity -- some
 25 functions you've increased their level of performance

1 by revegetating the wetland, removing the grazing
 2 pressure, but some functions are acreage based. Some
 3 water quality improvement functions are tied primarily
 4 to the size of the well, not always, but to the size
 5 and to the soil and to the slope.
 6 Q. And water quality improvement is one that is
 7 tied to the acreage size of a wetland? Isn't that what
 8 you're saying?
 9 A. Yes.
 10 Q. And what else is tied to size?
 11 A. Well, it also depends on the topography of
 12 the wetland.
 13 Q. What else is tied to size?
 14 A. In terms of wetland function, water quality
 15 is probably the most size-dependent function, although
 16 it's relative to what? Certainly some habitat
 17 functions are performed in larger wetlands where
 18 there's a mix of wetland types and topographies and
 19 there's interior habitat in connection to other
 20 wetlands and so forth. The purpose of -- the reason
 21 that I included this in my declaration --
 22 Q. Well, I didn't ask you that. I guess if
 23 you're going to kind of go beyond my question, I'd
 24 rather take the time to ask you another one. The last
 25 question I have for you, Mr. Stockdale, is were you

1 contacted by the port after the August 2001 401 was
 2 issued?
 3 A. Was I contacted by the port?
 4 Q. Yeah.
 5 A. Did anybody at the port call me?
 6 Q. Yeah. And complain.
 7 A. Not that I recall.
 8 Q. Did they call and say, We don't like this
 9 401?
 10 A. If they did, they didn't complain to me.
 11 Q. Were you aware that the port had complained
 12 about the August 401?
 13 A. Well, they probably did.
 14 Q. Pardon me?
 15 A. They probably did. No. I don't know.
 16 Q. You have no knowledge either way?
 17 A. Well, there was some questions that were
 18 raised, one, like I said, about the hydrologic
 19 monitoring downslope of the fill prism, but I don't
 20 think that constitutes a complaint.
 21 Q. Well, did the port to your knowledge ask for
 22 changes in the August 401?
 23 A. As far as the wetland element, they wanted
 24 clarification about that condition.
 25 Q. And how do you know that?

1 A. Well, because we changed it.
 2 Q. Well, how do you know the port wanted
 3 clarification about it?
 4 A. Because they had questions about it.
 5 Q. How do you know they had questions about it?
 6 A. Because I probably heard about it through
 7 Ray.
 8 Q. Ray?
 9 A. Hellwig.
 10 Q. But no one called you from the port and said,
 11 We've got questions about the wetlands conditions?
 12 A. I don't think so.
 13 Q. None of the port wetland scientists or
 14 consultant, whoever?
 15 A. No. I don't think Jim called me, no.
 16 Q. So whatever information you got about the
 17 possible need for changes didn't come through
 18 wetland-to-wetland person consultation?
 19 A. No.
 20 Q. It came in some other way; is that correct?
 21 A. Yeah.
 22 Q. When were you first aware that ecology was
 23 going to change the 401 conditions?
 24 A. Well, sometime after we issued it there was
 25 the question of clarifying that. You know, to be

1 honest with you, there was some -- there were
 2 discussions circling around it, but I wasn't part of
 3 those.
 4 Q. So no one came to you -- let me start over.
 5 Strike that.
 6 You didn't go to someone and say, I think we
 7 need to change the 401?
 8 A. No.
 9 Q. Did you think the August 401 was a competent
 10 401 decision?
 11 A. I was glad to be done with it.
 12 Q. Well, you got to focus on the question I ask.
 13 It will save us both a lot of time. Did you think the
 14 August 401 was a competent 401 decision?
 15 A. Yes.
 16 Q. When it was issued, did you have any thought
 17 in your mind that it would be changed within the space
 18 of a month or so?
 19 A. No.
 20 Q. Never occurred to you?
 21 A. I will not try to guess what the reaction is
 22 going to be.
 23 Q. I'm not asking you to guess what the port's
 24 reaction would be. I'm asking whether it ever occurred
 25 to you when the August 401 was issued that you would be

1 changing it within the space of a month or so.
 2 A. No. I had no reason to anticipate that.
 3 Q. You've agreed with the word competent. Would
 4 you call it an acceptable decision?
 5 A. The August 401, yes.
 6 Q. Was it an appropriate decision?
 7 A. I believe so.
 8 Q. Was it consistent to what you understood the
 9 scope of a 401 decision ought to be?
 10 A. Yes.
 11 Q. Thank you. I don't have any other questions
 12 now. Thank you very much, Mr. Stockdale.
 13 MR. PEARCE: I have one briefly on clean-up.
 14 EXAMINATION
 15 BY MR. PEARCE:
 16 Q. There was some testimony, Mr. Stockdale,
 17 about the wildlife hazard management plan, I think; is
 18 that correct?
 19 A. Yes.
 20 Q. You said that's not to your knowledge a
 21 condition in the 401? You said that was one of the
 22 things you thought you might have left out?
 23 A. It was in reference to one of the items in my
 24 memo of October 2000 where I suggested that we include
 25 language that gave us some sort of assurance that the

1 airport manager clearly understood what was in the 401,
 2 and subsequent to that, I believe that the way that
 3 that was resolved was that the 401 is being attached to
 4 the wildlife hazard management plan. It's part of the
 5 management plan.
 6 Q. Are you aware whether the -- let me strike
 7 that.
 8 The natural resources mitigation plan is a
 9 requirement in the 401, is it not?
 10 A. Yes.
 11 Q. Are you aware whether the wildlife hazard
 12 management plan is an appendix and required in the
 13 NRMP?
 14 A. I don't know if it's an appendix in the NRMP
 15 or not.
 16 Q. If it were, then it would be required as part
 17 of the NRMP, would it not?
 18 A. Yes.
 19 Q. That's all I have. Thanks.
 20 MR. EGLICK: I have something else, but do
 21 you, Joan?
 22 MS. MARCHICRO: No.
 23 FURTHER EXAMINATION
 24 BY MR. EGLICK:
 25 Q. With regard to the colloquy you just had with

1 Mr. Pearce, is it your testimony that everything that
 2 is attached to the NRMP then is automatically imported
 3 as a condition of the 401 in your understanding of the
 4 401?
 5 A. As a condition?
 6 Q. Yes.
 7 A. Well, there are a lot of things -- I'm trying
 8 to think what you're referencing as a condition. If
 9 it's part of the natural resource mitigation plan,
 10 which is clearly referenced in the 401, then I think it
 11 would follow that it would be part of that plan.
 12 Q. Once again, I'll ask you to answer the
 13 question I asked. Is it your testimony that everything
 14 that is attached to the NRMP is then imported as a
 15 condition into the 401 certification?
 16 A. I think that's a reasonable assumption, yeah.
 17 Q. And is there something in the 401
 18 certification that you can point to that bears that
 19 out?
 20 A. That bears that the attachments are
 21 conditions?
 22 Q. That the attachment -- for example, all the
 23 attachments to the NRMP are imported with the status of
 24 conditions into the 401.
 25 A. I'd have to look at the 401.

1 Q. Well, you've got it there. Do you want to
 2 take a minute and look at it?
 3 A. I'm going to have to tell my son that I'm not
 4 going to make my commitment with him.
 5 Q. This is the last question.
 6 A. Well, it's going to take me some time to
 7 answer that question fully. I mean, this document is
 8 fairly -- you're asking me for a fairly precise answer.
 9 Q. Well, okay. I thought you were familiar with
 10 this document and it would be an easy matter for you to
 11 go through and show me what you had in mind. If not,
 12 then fair enough. I'm serious about that,
 13 Mr. Stockdale. If it's not something you're not
 14 familiar with it enough to kind of point to me what you
 15 had in mind --
 16 A. No. I'd have to go look for it.
 17 Q. Well, then we'll just leave it at that so you
 18 can make your commitment.
 19 (Deposition concluded at 5:38 p.m.)
 20 (Signature was reserved.)

1 CORRECTION & SIGNATURE PAGE
 2
 3 RE: ACC v. DOE; PCHB; 01-160
 4 Erik Stockdale; January 23, 2002
 5
 6 I, Erik Stockdale, have read the within transcript
 7 taken January 23, 2002, and the same is true and
 8 accurate except for any changes and/or corrections, if
 9 any, as follows:
 10 PAGE LINE CORRECTION
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22 Signed at _____, Washington, on the
 23 _____ day of _____, 2002.
 24 _____
 25 Erik Stockdale

C E R T I F I C A T E

1
 2
 3 I, Mary L. Green, the undersigned Certified Court
 4 Reporter and Notary Public, do hereby certify:
 5 That the testimony and/or proceedings, a transcript
 6 of which is attached, was given before me at the time
 7 and place stated therein; that any and/or all
 8 witness(es) were by me duly sworn to tell the truth;
 9 that the sworn testimony and/or proceedings were by me
 10 stenographically recorded and transcribed under my
 11 supervision to the best of my ability; that the
 12 foregoing transcript contains a full, true, and
 13 accurate record of all the sworn testimony and/or
 14 proceedings given and occurring at the time and place
 15 stated in the transcript; that I am in no way related
 16 to any party to the matter, nor to any counsel, nor do
 17 I have any financial interest in the event of the
 18 cause.
 19 WITNESS MY HAND AND SEAL THIS 28TH DAY OF JANUARY
 20 2002.
 21 _____
 22 MARY L. GREEN, CSR #GREENML497RZ
 23 Notary Public for the State of Washington,
 24 residing in King County.
 25 My appointment expires 4/4/05.

Mary L. Green, CCR, RPR * Yamaguchi, Obien & Mangio
 206-622-6875 * m.marygreen@verizon.net

<p>#</p> <p>#GREENML497RZ</p> <p>[1] 215:22</p> <hr/> <p>\$</p> <p>\$18,000</p> <p>[11] 153:20 153:24 155:4 155:8 155:13 155:16 155:24 156:6 156:23 157:10 157:15</p> <p>\$20,000</p> <p>[1] 153:24</p> <p>\$30,000</p> <p>[1] 153:21</p> <p>\$30,150</p> <p>[1] 156:11</p> <p>\$50</p> <p>[2] 20:4 20:8</p> <hr/> <p>0</p> <p>01-160</p> <p>[2] 1:5 214:3</p> <p>014</p> <p>[1] 159:14</p> <p>019</p> <p>[1] 164:25</p> <hr/> <p>1</p> <p>1</p> <p>[9] 4:16 4:21 28:23 28:23 61:1 73:17 74:21 74:23 115:24</p> <p>10</p> <p>[12] 12:11 12:12 61:13 74:2 74:3 74:4 75:14 75:14 96:8 126:7 139:16 190:20</p> <p>100</p> <p>[2] 3:22 57:14</p> <p>102.27</p> <p>[1] 48:17</p> <p>109</p> <p>[1] 3:23</p> <p>10:02</p> <p>[2] 1:12 5:2</p> <p>11</p> <p>[3] 74:3 75:15 166:5</p> <p>111</p> <p>[1] 4:1</p> <p>1111</p> <p>[1] 2:12</p> <p>112</p> <p>[1] 4:3</p> <p>114</p> <p>[1] 4:5</p> <p>12</p> <p>[7] 3:13 3:23 71:9 83:12 109:11 174:20 190:20</p> <p>12:17</p> <p>[1] 72:4</p> <p>12th</p> <p>[3] 16:13 17:4 40:24</p> <p>13</p> 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73:2</p> <p>1st</p> <p>[1] 181:22</p> <hr/> <p>2</p> <p>2</p> <p>[4] 73:16 73:18 77:9 113:20</p> <p>20</p> <p>[4] 71:9 76:19 90:13 96:8</p> <p>200</p> <p>[1] 57:13</p> <p>2000</p> <p>[39] 3:8 3:17 3:23 4:1 4:3 4:6 4:7 4:12 4:14 4:16 26:24 30:19 30:23 31:5 31:12 77:3 88:22 90:13 98:2 100:12 101:2 109:12 109:14 111:6 112:17 114:8 114:18 115:7 115:12 115:15 125:2 140:7 141:12 142:18 148:10 157:23 161:15 166:5 210:24</p> <p>2001</p> <p>[31] 4:19 4:21 12:5 40:7 88:7 102:15 106:7 116:21 126:5 126:7 126:9 127:22 127:22 128:5 129:5 129:6 129:7 135:3 140:2 141:3 141:8 141:14 142:12 167:10 176:2 177:1 181:22 184:17 187:16 198:18 207:1</p> <p>2002</p> <p>[6] 1:13 5:1 214:4 214:7 214:23 215:20</p> <p>21</p> <p>[3] 73:10 148:10 153:2</p> <p>21.46</p> <p>[6] 50:20 51:7 51:9 53:5 81:22 82:19</p> <p>210</p> <p>[1] 3:4</p> <p>211</p> <p>[1] 3:3</p> <p>22</p> <p>[3] 4:14 161:15 167:10</p> <p>23</p> <p>[8] 1:13 5:1 53:11 54:1 98:2 100:12 214:4 214:7</p> <p>23.55</p> <p>[3] 51:18 51:21 52:15</p>	<p>24</p> 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