

**Oliva, Yvonne**

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**From:** Fitzpatrick, Kevin  
**Sent:** Tuesday, March 28, 2000 4:24 PM  
**To:** Luster, Tom; Svoboda, Pat; Stockdale, Erik  
**Cc:** Hellwig, Raymond; Ehlers, Paula; Garland, Dave  
**Subject:** RE: Comments on groundwater and surface water issues

Tom: I take issue with Greg Wingard's statement that Ecology's NWRO has admitted that the third lagoon expansion is to accommodate the proposed Third Runway. I am not aware of any such document or statement from staff here at the NWRO to that effect. What I do know about the third lagoon expansion is that it is being undertaken to accommodate the impacts of a larger continuous flow monitoring storm events for the IWS and to provide capacity to meter flow into the King County Sewer interceptor from the IWS. This expansion will also prevent untreated overflow events from the IWS to Des Moines Creek. I am presently checking with Port of Seattle environmental personnel to see if there is any part of the proposed Third Runway that would tie-in with the IWS and so far their initial review reported back that there is no direct tie-in to the IWS from the proposed Third Runway.

As to the increase in impervious surface and resulting impacts to recharge of base flows to surrounding wetlands and Des Moines Creek, I am assuming that Greg Wingard is referring to the increase of impervious surface that will result with the lining of the third lagoon with a synthetic liner. I do not know if such an evaluation of recharge was ever conducted. I suspect that it was not conducted because any recharge to surface waters, whether to the surrounding wetland or to Des Moines Creek, from the lagoon would be considered very minor and virtually non-existent. The lagoon presently has a clay liner with very low hydraulic conductivity which reduces its current recharge value. The decision to require a synthetic liner in the third lagoon was to eliminate a pathway of pollutants from the IWS to state groundwater. Greg Wingard could be right, however, that no evaluation was ever conducted to see if putting a synthetic liner in lagoon 3 would then result in reduced base flows to the surrounding wetlands and Des Moines Creek. Army Corps of Engineers has made the determination that the surrounding wetlands will not be impinged upon with the expansion of lagoon 3. I do not know if this determination addressed the recharge issue.

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-----Original Message-----

**From:** Luster, Tom  
**Sent:** Tuesday, March 28, 2000 10:02 AM  
**To:** Svoboda, Pat; Stockdale, Erik; Fitzpatrick, Kevin  
**Cc:** Hellwig, Raymond; Ehlers, Paula  
**Subject:** FW: Comments on groundwater and surface water issues

Hi Pat, Erik, and Kevin --

I received the e-mail below from Greg Wingard regarding a couple of issues related to the proposed SeaTac expansion. Could you please weigh in on them?

The first half of the message regards the validity of the two water rights in the golf course area; the second half is on the proposed IWS expansion and its potential wetland impacts.

I am about to start plowing through the Port's response to comments -- I imagine the issues identified below are addressed at least in part in that response, but would like to hear from each of you with your perspective. It would be great if you could get back to me by next Tuesday, April 4th so your comments are reflected in our meeting with the Port on April 6th.

Thanks very much -- please let me know if you have questions.

Tom L.

-----Original Message-----

**From:** Greg Wingard [<mailto:gwingard@earthlink.net>]  
**Sent:** Monday, March 27, 2000 3:26 PM  
**To:** Luster, Tom  
**Subject:** RE: Comments on groundwater and surface water issues

**AR 033722**

Tom:

Since there was an agreement to take additional comments after the close of the formal comment period, in regard to the 401 Certification for the Port (POS), I wanted to provide some comments for the record.

I am concerned about the direction issues related to groundwater/surface water impacts seem to be heading. A couple of examples, some what related, serve to illustrate the nature of my concern.

In recent actions by the Highline Water District, there was an attempt to transfer a water right to POS for instream flow augmentation, while the District would use a separate water right for domestic water supply. From a water rights perspective I have a couple of problems with this. First, based on documents in Ecology files, it appears that both of the so called water rights, as documented in certificate 2369, and 2191, were abandoned in the 1960s. It should be noted that the use of the well for irrigating the golf course was an illegal use. I can find no record that the District ever transferred the water right to POS, or that any party ever applied for, or received a change of use for that water right. The certificate for municipal water supply can not be used as a golf course irrigation supply without a change of use application and approval. Illegal withdrawal that does conform to the water right use (municipal supply) can not be construed as beneficial use, for purpose of creating a facade that the water right has been maintained. In short if there has been no beneficial use of the water right for longer than the last five years (thirty would seem to qualify), the water right does not exist. Also, for the water right the District is maintaining for domestic use, the well has apparently been capped since 1962. It is hard to think of a better example of abandonment of a water right than capping the conveyance and letting it sit there, without use, for 38 years. As a result it seems fairly clear that the District does not have a water right, as they abandoned it decades ago. Also, POS does not have a water right for the same reason, the right was abandoned. At the time of the recent settlement agreement, the District did not have a valid water right to sell, transfer, or give to POS. Given this set of facts, as reflected in Ecology files, how can Ecology possibly approve a transfer of water right, and a change of use of water right, when the right does not in fact exist?

I would be interested in your response to this issue as soon as convenient.

At best such action would seem to be seriously in conflict with water right law, and defective, as to procedure. It seems to me, the PCHB recently addressed concerns about how Ecology is handling water right issues, in their Battle Mountain Gold decision. If Ecology moves forward on the water rights related to instream flow augmentation given the current information available to the agency, it appears that perhaps the message PCHB tried to send, did not quite get through.

The other example relates to the proposed expansion of the third lagoon. The expansion will almost triple the size of the facility, from ~80 acre feet, to ~220 acre feet. A quick look at the design drawing confirms that the majority in the increase of the capacity is due to an increase in area, rather than depth. While there has been some discussion of the potential impacts this expansion may have directly to wetlands, a couple of points have been missed. First, the increase in impermeable surface area may directly impact surface and shallow groundwater flow to the wetlands surrounding the third lagoon. The expansion could decrease flows to the wetlands, which could impact the viability of the wetlands as to survival. Also, the land currently not covered by the expanded third lagoon, is available to provide recharge to Des Moines Creek. How much recharge is being lost as a result of the project? The Northwest Region of Ecology has already admitted that the expansion of the third lagoon is, in part, to provide capacity for the third runway project. They also contend that this project is covered by the NPDES permit, and as such does not need to be reviewed by the 401 process. There are two problems with this. The NPDES permit did not consider or mitigate the loss of recharge to Des Moines Creek as a result of the third lagoon expansion. Further, the impacts from the reduction in recharge will occur well beyond the life of the inforce permit, and thus are not, and can not be addressed by that permit. In such circumstances, the nexus between the proposed project and the 401

**AR 033723**

Certification requires that the impacts be dealt with as part of the certification process. Can you clarify how Ecology is going to deal with this issue?

Thank you for your attention to these issues. I look forward to your response.

Sincerely,

Greg Wingard

**AR 033724**