

**Luster, Tom**

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**From:** Luster, Tom  
**Sent:** Thursday, September 16, 1999 10:12 AM  
**To:** Hellwig, Raymond; Fitzpatrick, Kevin; Stockdale, Erik; Ehlers, Paula  
**Subject:** SeaTac issue: compliance with water quality standards

Hi all --

One more in my series, and the last for today...

I think this is the single biggest issue we need to resolve -- does the existing non-attainment of water quality standards in Des Moines Creek (and possibly Miller Creek) allow us to certify projects that will further adversely affect those streams? My read of the water quality standards and Clean Water Act suggests the answer is no, unless a project proponent includes adequate measures to allow those uses to be supported. This issue is at the heart of both the standards and the Act, and is the basis for most of our other issues -- meeting antidegradation, stormwater detention requirements, wetland mitigation, etc.

Des Moines Creek is identified in the basin plan as not meeting several elements of the water quality standards. Because the standards apply to a waterbody and also to discharges into that waterbody, we need to determine not only if a discharge meets the required limits, but whether the waterbody is maintaining its existing and/or designated uses. In the case of Des Moines Creek, it is apparent that the creek does not adequately support various stages of fish life, and possibly other aquatic life. This is documented in the Des Moines Creek Basin Plan and in several other sources.

Last year in working with the Port, we identified the key limiting factors as extremely high flows during storm events and extremely low summer flows. That finding was the primary basis for Ecology requiring the Port to do Level 2 detention and to provide flow augmentation as necessary parts of an approval 401 mitigation package

We still have the Level 2 detention in place (although the Port's current proposal will likely need to be adjusted), but last year's version of flow augmentation fell through when the Port found it did not have the water right for that proposal. However, the Port apparently is negotiating with the District to get enough water to do flow augmentation (which would be a good thing for the Port's mitigation proposal!). The Port has also mentioned the potential of providing flow augmentation through design of the stormwater facilities, but we haven't seen any details on how this would be done.

So -- at a minimum, we need these two pieces in place in order to get to an approvable, defensible yes.

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On a related note, the contention has been made that Ecology is making the Port responsible for fixing the problems of the basin. That is not the case -- Ecology is responsible for ensuring that water quality standards are met. If a water body is not meeting standards, then Ecology should not be allowing further non-attainment -- this would apply to any 401 project in the basin; it just so happens that the one we are currently reviewing is the Port's.

In this case, however, we may not have to say no because the project applicant, in order to receive a 401, may be willing to include measures that would allow the water body to attain standards.

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On a separate but related note -- per 40 CFR 131.3, existing uses are defined as those actually attained in the water body on or after November 28, 1975, and designated uses are those specified in our water quality standards for Class AA waters.

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