



## SQUAXIN ISLAND TRIBE

12 December 2011

Paula Hammond, Secretary of Transportation  
WSDOT  
POB 43700  
Olympia, WA 98504-7300

Ted Sturdevant, Director of Ecology  
WSDOE  
POB 47600  
Olympia, WA 98504-7600

Dear Secretary Hammond and Director Sturdevant,

RE: Incorporation of Oakland Bay Fecal Coliform TMDL into WSDOT Stormwater Permit

The Squaxin Island Tribe has a Treaty interest in Oakland Bay and its rich fishery resources. We have worked diligently with the local community to rectify the most recent, significant water pollution problems that arose in 2005. However, we remain concerned that the current positive water quality trends could easily and quickly turn negative. One influence is State Highway 3—it runs along the north shore of Oakland Bay and serves as a major conduit for stormwater runoff.

The Oakland Bay Fecal Coliform TMDL was recently approved by EPA and includes recommendations for WSDOT action. WSDOE is in the process incorporating these recommendations into the WSDOT Stormwater Permit. Comments on the draft permit are due by December 23<sup>rd</sup>, 2011.

In an effort to ensure adequate action to protect Oakland Bay, my staff (John Konovsky) had an informal consultation about the permit with representatives from WSDOT and WSDOE on November 7<sup>th</sup>. Richard Gersib attended from WSDOT and Kathleen Emmett, Foroozan Labib, Lydia Wagner, and Dustin Bilhimer attended from WSDOE.

The meeting was very productive. John shared some water quality data and suggested that there was no need to wait for WSDOT to do its own due diligence to begin implementing some fixes to known issues. He invited WSDOT to take some early action on already identified issues and suggested the following language (in red) be incorporated into the permit:

- *WSDOT will take early action on a limited number of Hwy 3 stormwater discharge locations to Oakland Bay and the stormwater conveyance system directly discharging to this receiving water identified as high priority from credible water quality data collected by*

*Mason County or the Squaxin Island Tribe. WSDOT will apply best management practices from their SWMPP or perform remediation to correct the situations.*

*(Current biennium)*

- *Longer term, WSDOT will independently inventory highway stormwater discharge locations, implement pollutant source identification, and identification of illicit sources of bacteria to WSDOT's stormwater conveyance system at the following locations within the TMDL boundary:*
  - *SR 3 stormwater discharge locations to Oakland Bay and the stormwater conveyance system directly discharging to this receiving water.*
  - *SR 3 stream crossings and the stormwater conveyance system directly discharging to these receiving waters.*
  - *US 101 stream crossings and the stormwater conveyance system directly discharging to these receiving waters.*

*(Submit budget request to the Office of Financial Management and the Governor for funding to implement this action in the 2013-15 biennium; complete implementation by 2015)*

- *If discharges that transport bacteria over natural background levels or the National Shellfish Sanitation Program standards for safe shellfish harvest (whichever is less), to the listed receiving waters are found, WSDOT will apply best management practices from their SWMPP or perform remediation to correct the situation.*
- *If discharges that transport suspended solids over natural background levels to the listed receiving waters are found, WSDOT will apply best management practices from their SWMPP or perform remediation to correct the situation.*

*(As needed based on discharge inventory and source identification findings)*

- *WSDOT will present on how their newly developed illicit discharge program works to the OBCWD Advisory Committee once the program is developed.*

*(Complete no later than November 2009)*

The next day, Jana Ratcliff from WSDOT responded by email with the following comment:

*We have reviewed the proposed revisions to WSDOT's assigned actions based on yesterday's meeting. We alternatively propose the actions remain as they appear in the draft permit modification with the following addition:*

- *Participate in TMDL adaptive management process. (Timeline: On-going)*

*This is based on the following:*

- *Provides additional flexibility that may include site visits, data review, collaborative problem solving, etc. that isn't reflected in the more specific actions being proposed.*
- *Demonstrates the level of responsibility WSDOT should assume since we have not been identified as a significant source of fecal coliform.*
- *Consistency with other TMDLs where specific actions are not yet known (Samish Bay TMDL), but based on findings, WSDOT may need to take specific action in the future.*

I and the Tribe are disappointed with this response. Oakland Bay is a center of our Tribal culture and economy. It is one of the richest shellfish growing areas in the nation. Between the Tribe and shellfish industry, over \$10M of shellfish products are harvested from slightly more than 1500 acres. Neither the state, the Tribe, nor the shellfish industry can afford to lose this resource, and I am sure the Governor would be displeased to have another "Samish Bay" on her watch. I know the state has limited dollars and competing interests, but the unique value of Oakland Bay should make it a high priority in all our minds.

Therefore, I am writing you to seek your advocacy to incorporate more definitive actions to control or treat fecal coliform before it enters Oakland Bay along Highway 3. I do not understand what *Participate in TMDL adaptive management process* means, nor what it will accomplish. I think we need to define a more robust set of actions to ensure Highway 3 does not contribute to closure of shellfish beds in Oakland Bay. I hope you will agree.

My staff can provide you with the locations of the three highest priority action areas. They are all relatively focused and are adjacent along a short section of Highway 3 between Bayshore Golf Course and the upper end of the bay. It should not be a surprise to anyone that these discharges are near the marine water quality stations currently considered most at risk of a shellfish harvest downgrade by WSDOH.

Mason County and Mason Conservation District have put tremendous effort into correcting sources of bacteria found elsewhere around Oakland Bay. The septic fixes and agricultural best management practices implemented since the 2005 "crisis" have effectively removed nearby Chapman Cove from the list of threatened shellfish growing areas published every year by WSDOH. Chapman Cove is home to an annual harvest of nearly 2 million high-value Kumamoto oysters for the half-shell market.

What remains at issue is the upper end of the bay. It is the terminal estuary of a terminal estuary of a terminal estuary. It has very poor water circulation and any pollutants introduced linger for long periods of time. Our research has shown that, for reasons not completely understood, this is true even for fecal bacteria. They do not die off in quick order and in the summer, their concentrations linger at high levels for an extended period. These circumstances lead to the upper end of the bay and Highway 3 discharges being the next "low hanging fruit." This

stretch of Highway 3 is “ripe” for correction now, not in the 2013—15 biennium. I hope you will concur and help us find a mutually agreeable way to move forward.

Feel free to have your staff contact John Konovsky for further discussion. If it seems like it might be beneficial, we can arrange for a formal government-to-government consultation to further explain our concerns.

Thank you for your time and attention to this issue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Andy Whitener', with a long horizontal flourish extending to the right.

Andy Whitener, *Natural Resources Director*

CC: Foroozan Labib, Department of Ecology  
Richard Gersib, Department of Transportation  
Vicki Kirkpatrick, Mason County Public Health Director