

1
2
3
4
5
6
7 **BEFORE THE POLLUTION CONTROL HEARINGS BOARD**
IN AND FOR THE STATE OF WASHINGTON

8 SAMMAMISH PLATEAU WATER AND
9 SEWER DISTRICT,

Appellant,

v.

10 STATE OF WASHINGTON, DEPARTMENT
11 OF ECOLOGY, and CITY OF ISSAQUAH,

12 Respondents.

No.

NOTICE OF APPEAL

13 Sammamish Plateau Water and Sewer District hereby appeals the grant of coverage
14 under the Western Washington Phase II Municipal Stormwater General NPDES Permit issued
15 on August 1, 2012, to the City of Issaquah and the adequacy of the permit conditions as
16 applied to the City of Issaquah.

17 **I. Appealing Party**

18 1.1 Appealing Party.

19 Jay Krauss, General Manager
20 Sammamish Plateau Water and Sewer District
21 1510 228th Avenue S.E.
Sammamish, WA 98075
Telephone: 425-392-6256 Fax: 425-391-5389

22 1.2 Representation.

23 James A. Tupper, Jr.
24 Tupper Mack Wells, PLLC
2025 First Avenue, Suite 1100
Seattle, WA 98121
Telephone: 206-493-2300 Fax: 206-493-2310

25
26 NOTICE OF APPEAL

II. Identification of Parties

- 2.1 Sammamish Plateau Water and Sewer District, Appellant.
- 2.2 State of Washington, Department of Ecology, Respondent.
- 2.3 City of Issaquah, Respondent.

III. Copy of Permit

- 3.1 See attached copy of the Phase II Municipal Stormwater NPDES Permit, issued on August 1, 2012, without appendices or fact sheet.

IV. Grounds for Appeal

4.1 The Phase II Municipal Stormwater General Permit ("Phase II Permit" or "Permit") authorizes and regulates the discharge of stormwater from a real estate development within the City of Issaquah known as Issaquah Highlands. The discharges authorized by the Permit have a significant potential to adversely impact public water supplies drawn by wells owned and operated by the Sammamish Plateau Water and Sewer District ("District"). Additionally, the Permit does not adequately protect against these potential impacts and does not include conditions that adequately protect applicable water quality standards, including ground water standards and drinking water standards.

4.2 A substantial portion of the Issaquah Highlands stormwater discharges to the Lower Reid Infiltration Gallery ("LRIG"), which is approximately 600 feet upgradient from the District's Well No. 9. The District owns and operates two additional drinking water wells, Wells No. 7 and 8, which are also downgradient and within 1/4 mile of the LRIG. The discharge of stormwater to ground water which supplies District Wells No. 7, 8 and 9 as authorized by the Permit may adversely impact ground water quality and, consequently, an important regional source of municipal water.

V. Statement of Facts

5.1 Issaquah Highlands ("Issaquah Highlands" or the "Project") is a mixed-use urban-planned community of 640 acres. The Project is located on a plateau north of Interstate Highway 90, near the City of Issaquah. On August 1, 2012, the Washington State Department of Ecology ("Ecology") issued the Phase II Permit. The Permit authorizes the discharge of stormwater from Issaquah Highlands at two discharge points, one to surface water and one to ground water. The LRIG, which is the discharge point to ground water, is located at the base of a steep slope on the western edge of the development.

5.2. Port Blakely Communities, the developer of the Project ("Developer"), abandoned previous plans to infiltrate stormwater on the Project's uplands several hundred feet higher and over one-quarter mile east of the LRIG. The stormwater management system as originally proposed for the Project provided for deep stormwater infiltration to valley aquifers and recharge to the alluvium to help sustain flows in the East Fork of Issaquah Creek. However, the original proposal could not be implemented after the Developer removed vegetation and topsoil and mined thirty to fifty feet of sand and gravel from the surface at the Project site. Stormwater infiltration through the remaining soils was not feasible and the Project needed an alternative stormwater disposal system. The Phase II Permit reaffirms a previous decision to direct substantial volumes of stormwater to the LRIG on the west side of the development, away from the East Fork of Issaquah Creek and directly into the Lower Issaquah Valley Aquifer.

5.3 The District, located east of Lake Sammamish and immediately north of the City of Issaquah, is the primary purveyor of potable water for portions of the City of Sammamish and the City of Issaquah, as well as areas of unincorporated King County. The District currently provides high quality ground water to more than 50,000 people.

1 5.4 The District owns and operates three drinking water wells near the LRIG. Well
2 No. 9 is approximately 600 feet from the primary stormwater discharge point to ground water.
3 Wells No. 7 and 8 are located to the west and within 1/4 mile of the stormwater discharge
4 point. All three wells are downgradient from the discharges to the LRIG authorized under the
5 Permit.

6 5.6 The aquifers in which Wells No. 7, 8 and 9 are located are in hydraulic
7 continuity with the LRIG. The aquifers constitute underground sources of drinking water
8 ("USDW") within the meaning of WAC 173-218-030(16).

9 5.7 The Permit was unlawfully issued because Ecology failed to consider all
10 applicable water quality standards including, without limitation, ground water quality
11 standards, Chapter 173-200 WAC, and federal drinking water standards.

12 5.8 The Permit was unlawfully issued because Ecology failed to consider the anti-
13 degradation standard for ground waters of the State under WAC 173-200-030.

14 5.9 The Permit was unlawfully issued because Ecology failed to include effluent
15 limitations that will ensure that the authorized discharges do not cause or contribute to either
16 (a) violations of water quality standards, or (b) injuries to existing beneficial uses.

17 5.10 The Permit was unlawfully issued because Ecology failed to require
18 monitoring sufficient to determine compliance with permit effluent limitations and applicable
19 water quality standards. In particular, the Permit does not require adequate monitoring or
20 make provision for any mitigation or adaptive management in the event that discharges at the
21 LRIG adversely impact ground water quality or existing beneficial uses.

22 5.11 The Permit was unlawfully issued because it does not include specific
23 requirements for developing a stormwater management program that will ensure compliance
24 with applicable water quality standards.
25
26

1 5.12 The Permit was unlawfully issued to the extent that it excludes discharges from
2 the LRIG from coverage under the Permit while still covering stormwater management and
3 discharges within Issaquah Highlands.

4 **VI. Relief Sought**

5 Wherefore, Sammamish Plateau Water and Sewer District respectfully requests that
6 the Board grant and issue the following relief:

7 1. An order revoking coverage under the Permit for that portion of the City of
8 Issaquah encompassed by Issaquah Highlands together within any other area within the City
9 that discharges to the LRIG.

10 2. In the alternative, an order directing the Department of Ecology to modify the
11 Phase II Permit to address the permit deficiencies set forth above including, but not limited to,
12 adequate monitoring, mitigation plans and adaptive management requirements to protect
13 ground water resources or require adequate storage and release of stormwater directly to the
14 North Fork of Issaquah Creek.

15 3. An order finding that the Permit was improperly issued, together with a remand
16 to the Department of Ecology directing that the Permit be modified in a manner consistent
17 with the ruling of the Board herein, including appropriate SEPA review.

18 4. Such further relief as the Board deems appropriate under the circumstances of
19 this case.

20 Respectfully submitted this 30th day of August, 2012.

21 TUPPER MACK WELLS, PLLC

22 James A. Tupper, Jr., WSBA No. 16873

23 Sarah E. Mack, WSBA No. 12731

24 Bradford T. Doll, WSBA No. 38479

25 2025 First Avenue, Suite 1100

26 Seattle, Washington 98121

Tel: (206) 493-2300 Fax: (206) 493-2310

Attorneys for Appellant

Sammamish Plateau Water and Sewer District

TUPPER MACK WELLS, PLLC

2025 First Avenue, Suite 1100

Seattle, Washington 98121

TEL 206.493.2300

FAX 206.493.2310

DECLARATION OF SERVICE

I declare on oath that on this date I filed the foregoing Notice of Appeal with the Pollution Control Hearings Board by facsimile transmission and by concurrently mailing the original and three copies, addressed as follows:

Pollution Control Hearings Board
P. O. Box 40903
Olympia, WA 98504-0903
Facsimile: 360-586-2253

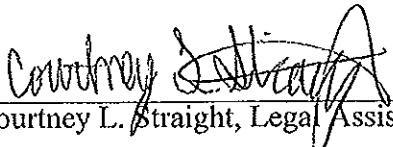
I further declare that I served the foregoing Notice of Appeal on the following parties by facsimile transmission and first-class mail, properly stamped and addressed as follows:

Department of Ecology
Attn: Appeals Processing Desk
P. O. Box 47608
Olympia, WA 98504-7608
Facsimile: 360-407-6426

City Clerk
City of Issaquah
P.O. Box 1307
Issaquah, WA 98027
Facsimile: 425-837-3009

The Honorable Ava Frisinger
City of Issaquah Mayor's Office
P.O. Box 1307
Issaquah, WA 98027
Facsimile: 425-837-3009

Signed at Seattle, Washington, this 30th day of August, 2012.



Courtney L. Straight, Legal Assistant