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ATTORNEY GENERAL OF WASHINGTON

Natural Resources Division
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July 15, 2008

Billy Plauché
GordonDerr LLP
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Dear Mr. Plauché:

The Department of Natural Resources (“DNR”) has requested that I communicate to you some of the pending issues regarding the unresolved trespass on state-owned aquatic lands caused by Taylor Shellfish’s aquaculture operations in Totten Inlet. As both DNR and Taylor Shellfish continue to research the situation to gather all of the necessary facts to resolve the trespass, here are some of the matters that will need to be addressed as we move forward.

First, once the extent of the trespass has been documented, DNR will need to determine the scope of damages to be paid for the prior use of state-owned aquatic lands. So long as the shellfish that have previously been removed from the site were aquaculture products planted by Taylor Shellfish, the applicable statutes are RCW 79.02.300, setting forth the remedies for trespass on public lands, and RCW 79.135.100, which sets out DNR’s statutory authority to bid or negotiate rents for aquaculture leases. Per RCW 79.02.300, one manner of valuing damages is to charge “the market value of the use, occupancy, or things removed, had the use, occupancy, or removal been authorized.” DNR’s normal methodology for calculating rents in aquaculture leases is to charge a base fee plus a percentage on harvested products, and DNR may apply that same methodology here. In order to calculate damages for the present situation, DNR will need copies of all harvest records attributable to the area of trespass.

The second matter involves disposition of any current shellfish products remaining in the trespass area. Washington law distinguishes between shellfish that are embedded, which are attached to the land as if any other fixture or improvement, versus unattached wildlife which would be characterized as *ferae naturae*. In the case of “un-embedded” aquaculture products, those would not constitute *ferae naturae* since they are in the domain and control of Taylor Shellfish. As a result of this distinction in Washington law, any shellfish within the trespass area that are not embedded would constitute the personal property of Taylor Shellfish, and DNR does not have the legal authority to assert ownership of those shellfish. The calculation of damages,

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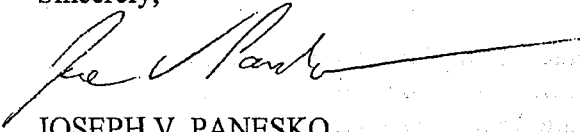
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however, may factor in those shellfish that had been cultivated on the area, even if they have recently been moved from the site by Taylor. It is my understanding that Taylor Shellfish has already removed some of the oyster bags under DNR's consent and oversight. Taylor Shellfish will need to obtain additional authorization from DNR before entering the area to remove any further personal property that may still remain on the site. As for the embedded shellfish, DNR will not authorize the removal of those products, the disposition of which will be subject to the ultimate resolution of the situation.

DNR awaits the submission of the survey from Taylor Shellfish to assist in resolving this situation. Additionally, I have been informed by my client that the last of the extraordinary daytime low tides will be occurring within the next two weeks. DNR staff would like to obtain from Taylor Shellfish before then documentation regarding the quantities and species of shellfish still remaining on the site, so that DNR will have the opportunity to conduct a field visit during the extra low tides to verify the information.

Please have your client supply the requested information directly to DNR, but also feel free to contact me if you have any questions. DNR looks forward to the continued cooperation from Taylor Shellfish in order to promptly resolve the situation.

Sincerely,



JOSEPH V. PANESKO
Assistant Attorney General
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JVP/rak

cc: Rich Doenges, Aquatic Resources Division, Department of Natural Resources