



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

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**INVESTIGATIVE REVIEW MEMORANDUM**

Date: February 15, 2017

To: Public Disclosure Commission Members

From: Kurt Young, PDC Compliance Officer

Subject: 45-Day Citizen Action Complaint  
Larry Wasserman, Strategies 360, Inc, and Dennis McLerran  
PDC Case 8321

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**I. Investigative Review Background, Request for PDC Review, and Statutes**

The Swinomish Indian Tribal Community (Swinomish Tribe) is a federally-recognized Indian Tribe organized and operated in accordance with Section 16 of the Indian Reorganization Act. The Tribe's governing body consists of 11 elected tribal members who serve five year staggered terms. Attorneys for Mr. Wasserman, and for the Swinomish Tribe, have asserted that the complaint raises issues of sovereign immunity. Staff decided to first assess whether there were any violations of the grass roots lobbying or political committee registration requirements, and to look at the PDC's enforcement authority and sovereign immunity arguments only if there appeared to be a compliance issue that required enforcement.

Strategies 360 is a strategic public affairs and communications firm with offices in 12 western states and the District of Columbia, and a staff with expertise across business, government relations, market research, branding, marketing and advertising, journalism, coalition building, and social networking.

The Environmental Protection Agency (EPA) was established on December 2, 1970 to consolidate in one agency a variety of federal research, monitoring, standard-setting and enforcement activities to ensure environmental protection in the United States of America. Since its inception, the EPA has been working for a cleaner, healthier environment for the American people.

On September 14, 2016, James a Tupper, Jr. filed a complaint with the Public Disclosure Commission (PDC) alleging that Larry Wasserman, an employee of the Swinomish Tribe, Strategies 360, Inc., a public affairs consulting firm, and Dennis McLerran, Region 10 Administrator for the Environmental Protection Agency (EPA) violated RCW 42.17A.640 by

failing to register and report grass roots lobbying activities undertaken in support of Washington State legislation. **Exhibit 1.**

RCW 42.17A.640 defines “Grass roots lobbying” as “(1) Any person who has made expenditures, not reported by a registered lobbyist under RCW 42.17A.615 or by a candidate or political committee under RCW 42.17A.225 or 42.17A.235, exceeding \*one thousand dollars in the aggregate within any three-month period or exceeding \*five hundred dollars in the aggregate within any one-month period in presenting a program to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation shall register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots lobbying campaign. (2) Within thirty days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall register by filing with the commission a registration statement...”<sup>1</sup>

## II. Amended Complaints and Additional Information

As part of the initial complaint, Mr. Tupper provided documentation that included information about the *What’s Upstream* campaign undertaken by the Respondents which allegedly included a grass roots lobbying component. The *What’s Upstream* campaign included radio spots on KUOW, Facebook advertisements, transit and billboard advertisements, and information included on the *What’s Upstream* website (whatsupstream.com). The documents included the following:

- A copy of a document produced by the Northwest Indian Fisheries Commission (NWIFC), a consortium of 20 federally recognized Indian Tribes from Western Washington, and entitled NWIFC Grant Program: FY 2011 Noncompetitive Tribal Projects for Restoration and Protection of Puget Sound -- Swinomish Indian Tribal Community Non-Point Pollution Public Information and Education Initiative -- Year 2. The documents included a number of emails from members of the Swinomish Tribe and representatives with the NWIFC, and Marty Loesch of Strategies 360, concerning information about *What’s Upstream* and the “public information campaign about non-point source pollution.” The email stated: “We have reviewed your thoughtful suggested edits to our content, and have incorporated many of them in the final versions of text for the website and the letter to elected officials, which you find attached.”
- Two surveys that had been conducted by Strategies 360 during the period of July 8 - 11, 2012 (a 19-page 67 question survey), and during the period March 20 - 23, 2014 (a 9-page 63 question survey). The 2012 survey sample size was 600 Respondents, and the 2014 survey sample size was 602 Respondents. The survey questions and results included 26 questions concerning buffers between cultivated land and salmon streams, general demographic questions, voting questions, Republican vs. Democratic, Progressive vs. Conservative.

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<sup>1</sup> The statute contains asterisks (\*) to signify that the monetary amounts have been adjusted for inflation since the statute was adopted.

- A “Take Action” document linked from the *What’s Upstream* website, which included a “CLICK HERE” link instructing the viewer to “tell your legislators it’s time for stronger protection of our water.” The viewer could use a pre-written letter, or could customize the letter and then hit send.

On October 14, 2016, Mr. Tupper filed an amended initial complaint providing additional information to the PDC, and stating that “Save Family Farming would like to supplement the information supporting the original complaint based on documents released to it by the EPA on October 7, 2016, in response to an ongoing Freedom of Information Act request.” **Exhibit #2.** In addition, Mr. Tupper amended the complaint against Mr. Wasserman and Strategies 360 to alleged they failed to “register and report as a political committee formed to conduct an initiative campaign.”

On December 8, 2016, Mr. Tupper filed a second amended complaint providing additional information to the PDC, reiterating the allegations against Mr. Wasserman, Mr. McLerran and the EPA, and partially responding to the response letter from the EPA, which Mr. Tupper had received as part of a standing public records request filed with the PDC concerning this matter. **Exhibit #3.** The amended complaint argued that: (1) Actions against Mr. McLerran and Mr. Wasserman “are not barred under the principles of sovereign immunity;” (2) Mr. Wasserman “conceded in his response to the PDC that he was engaged in an unregistered grass roots lobbying effort and unregistered political campaign;” (3) “Mr. McLerran has not established his right to qualified immunity;” and (4) “The request to dismiss the complaint against McLerran is premature.”

On January 4, 2017, Mr. Tupper filed a third amended complaint providing additional information to the PDC, reiterating the allegations against Mr. Wasserman, Mr. McLerran and the EPA. **Exhibit #4.** The documents included additional emails from members of the Swinomish Tribe, the NWIFC and the EPA, and Strategies 360, and screen shots taken from the *What’s Upstream* website.

### **III. Staff Investigative Review**

#### **A. Records and Database Information**

PDC staff reviewed the following documents:

- September 7, 2016, complaint and multiple exhibits filed with the PDC against Larry Wasserman, Strategies 360, Inc., and Dennis McLerran.
- October 14, 2016, amended complaint, exhibits, and supplemental information is filed with the PDC.
- December 8, 2016, second amended complaint, exhibits and supplemental information is filed with the PDC.

- January 4, 2017, third amended complaint, exhibits, and supplemental information is filed with the PDC.
- Lobbyist Registrations (L-1 reports) and Monthly Lobbyist Expense Reports (L-2 reports), and conducted several queries of the PDC lobbyist database for lobbying activities undertaken by the Swinomish Indian Tribal Community.
- The *What's Upstream* website and related information provided as part of the complaint, amended complaints, exhibits and supplemental information.
- December 1, 2016, response letter submitted on behalf of Mr. Wasserman by Brian Chestnut and Wyatt Golding, two attorneys with the Seattle Law Firm Ziontz Chestnut.
- November 3, 2016, two-page response letter from Lisa Castanon, with the EPA, submitted on behalf of Mr. McLerran, along with a two-page enclosure.
- December 2, 2016, two-page response letter from Sacorro Rodriquez, with the EPA, submitted on behalf of Mr. McLerran, along with a four-page declaration from Mr. McLerran.
- December 22, 2016, two-page response letter from Ms. Rodriguez on behalf of Mr. McLerran and the EPA.
- December 29, 2016, Jeff Reading, Vice-President of Communications for Strategies 360 sent an email to PDC staff responding to staff's request for information concerning the allegations listed in the complaint.
- January 3, 2017, Kevin J. Hamilton, an attorney with the Seattle Law Offices of Perkins Coie, submitted an additional letter on behalf of Strategies 360.

## **B. Response from Larry Wasserman**

On December 1, 2016, the PDC received an email with an attached response letter submitted on behalf of Mr. Wasserman by Brian Chestnut and Wyatt Golding, two attorneys with the Seattle Law Firm Ziontz Chestnut. **Exhibit #5.** On December 19, 2016, the PDC received an email with an attached supplemental response letter submitted on behalf of Mr. Wasserman by Mr. Chestnut and Mr. Golding. **Exhibit #6.** The response letters have been combined into one response as listed below.

The initial letter stated “this matter concerns the Swinomish Indian Tribal Community’s (Swinomish Tribe) efforts to educate the public on water quality issues and leading causes of pollution.” Mr. Wasserman has served as the Environmental Policy Director for the Swinomish Tribe since 1991, and he “was the Tribe’s project coordinator for the public education efforts at issue” to raise awareness of the impacts that farming has on water quality issues, including Puget Sound.

In 2011, the Swinomish Tribe applied for a grant from the NWIFC, and the request for funds “focused on the protection of Skagit Chinook salmon, and in particular sought to provide information to community members and decision makers to support improved regulatory mechanisms and encourage better individual conservation actions.”

The NWIFC approved the grant, and the Swinomish Tribe approved the work plan for the grant funds. In 2012, the Swinomish Tribe retained Strategies 360 to develop an ongoing communications strategy concerning Puget Sound and regional water quality issues. Between 2012 and 2015, the Swinomish Tribe continued to receive grant funding from the NWIFC and then used those funds to retain Strategies 360 to continue the educational outreach efforts concerning water quality. Mr. Wasserman served as the Project Coordinator on behalf of the Swinomish Tribe, and his “salary and travel were funded exclusively by the Tribe and he did not contribute any of his own funds to the public outreach initiative.”

The grant listed seven specific tasks for the grant activities that were undertaken by the Swinomish Tribe, including testing and refining the message through print advertisements in Washington newspapers and ads on social media platforms, developing print, online and audio materials for outreach communications, placing earned media stories, and person to person outreach efforts involving community leaders.

The Swinomish Tribe launched the *What’s Upstream* website and associated communications outreach in the fall of 2015. Also in 2015 and separate from the *What’s Upstream* project, the Swinomish Tribe “considered the possibility of an initiative which would increase riparian buffers on agricultural lands in order to protect water quality and salmon habitat.” The letter stated:

- For advocacy on actual legislative issues, the Tribe employs a registered lobbyist named Davor Gjurasic. Mr. Gjurasic is a contract lobbyist who “has regularly reported to the PDC in full compliance with all laws and regulations. As a result, a record of any money spent by the Tribe on lobbying is fully available to the public on the PDC’s website.”
- Mr. Wasserman was not required to register with the PDC as a grass roots lobbying campaign, since he spent no funds on grass roots lobbying activities, including Swinomish Tribal funds (or using his personal funds). Since Mr. Wasserman spent no funds on grass roots lobbying activities, he is not considered a sponsor of a grass roots lobbying campaign in accordance with RCW 42.17A.640.
- The EPA considered the grant work undertaken by the Swinomish Tribe (as a sub-award recipient), to be a “public education and outreach effort” and that none of the activities “could be considered ‘intended, designed, or calculated primarily to influence legislation.’”
- The public outreach efforts undertaken by the Swinomish Tribe “did not take any concrete steps to promote or oppose specific legislation and therefore did not undertake grass roots lobbying.”

- “To the extent Mr. Wasserman worked with the legislature on House Bill 2352, that activity was conducted through and in coordination with a registered lobbyist (Mr. Gjurasic) in full compliance with the law.”
- Mr. Wasserman was not required to register with the PDC as a political committee in support of a ballot measure since he never filed a ballot proposition statement with a local or Washington State election official, and he did not solicit or accept contributions or make expenditures in support of a ballot proposition.
- The materials provided by the complainant “demonstrate” that the work conducted by the Swinomish Tribe and Mr. Wasserman using the grant funding “was to educate the public with the goal of improving water quality and fish habitat. The Tribe’s public outreach effort never focused on specific legislation or potential legislation.”

### **C. Responses from the EPA**

On November 3, 2016, Lisa Castanon, Acting Regional Counsel for Region 10 of the EPA, submitted a letter on behalf of Mr. McLerran, along with an enclosure that provided information concerning a Cooperative Agreement between the EPA and the Northwest Indian Fisheries Commission. **Exhibit #7.** Ms. Castanon stated that EPA's National Estuary Program (NEP) grant was made to the NWIFC. She stated there was no direct NEP grant awarded to the Swinomish Tribe.

Ms. Castanon stated that the grant funding decisions to the NWIFC were made directly by EPA as a Federal Agency and not by Mr. McLerran acting in his personal capacity, and that he should be “dismissed from this matter.... because he did not personally provide any funding ‘intended, designed or calculated primarily to influence legislation.’” Ms. Castanon went on to state the EPA provided federal funds to the NWIFC through a “cooperative agreement.” The cooperative agreements structure is that “EPA has a direct relationship with the NWIFC, as the awardee, but no such relationship with any of the NWIFC’s sub-awardees” which included the Swinomish Tribe.

Ms. Castanon stated that the EPA provided funds to the NWIFC in order to “conduct a program to fund and manage various implementation projects of high tribal priority”, and that the Swinomish Tribe is one of many recipients of a sub-award from the EPA grant awarded to the NWIFC. She stated that the Swinomish Tribe spent some of the funds received from the NWIFC “to conduct an education and outreach project focused on reducing non-point source water pollution impacting water quality and salmon habitat in Puget Sound” and that project is referred to as a “Non-Point Pollution Public Information and Education Initiative.”

Ms. Castanon stated that the complaint concerns activities undertaken by the Swinomish Tribe over several years, and some of those activities may have been partially funded under the EPA’s sub-award made to the NWIFC, as well as other activities not funded by the sub-award. She explained:

- Under the “cooperative agreement”, the EPA does not have the authority or ability “to direct the content of the work product of the NWIFC or a recipient of a sub-award.”
- The NWIFC is responsible for monitoring a sub award recipient's performance, ensuring compliance with the conditions of the grant, applicable laws, and that the “proposed sub-award costs are necessary, reasonable, and allocable.”
- The “cooperative agreement” directed that the NWIFC, not the EPA, as the funder for all sub-awards, approve the activities conducted by the sub-award recipients, including the Swinomish Tribe.
- There was “no direct relationship between the EPA and the Tribe under this cooperative agreement.”
- A small amount of the EPA's “defined role was to engage the NWIFC and the Swinomish Tribe to ‘discuss proposed annual work plans that the NWIFC requires of its sub-award recipients, including tasks delineated under those work plans.’”

Finally, Ms. Castanon stated that the EPA also provided comments and recommendations during routine program reviews concerning “potential” issues and areas of non-compliance that included providing “guidance regarding the federal lobbying restrictions applicable to assistance agreements.

On December 22, 2016, Socorro Rodriguez, Office of Regional Counsel for Region 10 of the EPA, also submitted a response letter on behalf of Mr. McLerran and the EPA, stating that “Mr. Tupper’s amended complaint provides neither factual not legal basis for his PDC complaint against Mr. McLerran.” **Exhibit #8.** Ms. Rodriguez reiterated that Mr. McLerran was acting in his official capacity as the EPA’s Regional Administrator and that the record indicates that he was not engaged in any grass roots lobbying campaign or any lobbying activities.

#### **D. Response from Mr. McLerran**

On December 2, 2016, Ms. Rodriguez, Office of Regional Counsel for Region 10 of the EPA, submitted a response letter on behalf of Mr. McLerran, along with a declaration from Mr. McLerran dated December 1, 2016. **Exhibit #9.** In the declaration, Mr. McLerran stated that he has not engaged in or directed a grass roots lobbying campaign in Washington State. He stated that all of his contacts with the Swinomish Tribe were concerning the grant “sub-award” that the tribe had received from the NWIFC, and that he was acting in his official capacity as EPA Regional Administrator for Region 10 and the activities were part of his official duties.

Mr. McLerran stated that as EPA Regional Administrator, he directs the implementation of EPA policies and programs for Region 10, which includes Washington state and the protection and restoration of Puget Sound. He stated that the EPA and 12 other federal, state and local agencies promote information sharing, priorities and collaboration with tribal partners such as the NWIFC working to restore Puget Sound.

Mr. McLerran stated that EPA Region 10 receives funding from the US Congress through the NEP to assist in the protection and restoration of Puget Sound, and that the EPA distributes those funds through grants that are awarded to state and local governments and also to tribal governments. He stated the EPA provided NEP funding directed to the NWIFC through a cooperative agreement, which provided for the NWIFC to “make sub-awards to other eligible entities, including the Swinomish Tribe.”

Mr. McLerran stated that he does not personally award any EPA grants, and that the grant made to the NWIFC was made by the EPA as an agency, and he did not have any role in directing the funding of the NWIFC, including the sub-award made to the Swinomish Tribe. Mr. McLerran further explained:

- On July 16, 2015, he contacted Mr. Wasserman with the Swinomish Tribe and “directly requested that some of the proposed website content of the whatsupstream project be toned down” and that he work with EPA staff “to make the content of the whatsupstream website more collaborative - and thus consistent with the intent” of the NEP.
- The attorney for the Swinomish Tribe and EPA Region 10 staff members participated in the call, and that it was his hope that the conversation would result in the Swinomish Tribe “modifying the content of whatsupstream... to make the content less adversarial in nature.”
- Prior to making the call, EPA legal staff advised him the EPA had “very limited control” over the activities of the Swinomish Tribe concerning funds they were sub-awarded by the NWIFC, but that staff and he felt that “we should inform the Tribe of EPA’s concerns about the content staff had seen.”
- That was the last time he had been in contact with the Swinomish Tribe regarding the NWIFC grant, until EPA staff informed him “many months later in the Spring of 2016 that the ‘whatsupstream’ campaign website and a ‘take action’ button had been finalized, billboards and bus ads had been erected, and that the agricultural community was upset.”
- He had no personal knowledge of the “whatsupstream” take action button, or other activities being undertaken including the billboard and bus advertisements until EPA staff “informed me of their existence in spring 2016. By the time I learned of these items, the transit ads had already been taken down.”
- In the spring of 2016, Mr. McLerran contacted Brian Cladoosby, Chairman of the Swinomish Tribe, and “requested that the tribe take down the billboards and website. Ultimately, over a period of two weeks or so, I had several such telephone conversations with Chairman Cladoosby and his staff, repeating my request that the Tribe take down the billboards and web content.”



- In those conversations, “Chairman Cladoosby indicated the tribe would take down the billboards and would not seek further reimbursement from the NWIFC for whatsupstream. However, he ultimately did not agree with my request that the Tribe take down the website.
- After learning of Congressional concerns about the whatsupstream website and advertising, I had a separate face-to-face meeting with Mike Grayum, then the Executive Director of the NWIFC, and Chairman Brian Cladoosby, and again expressed EPA 's concerns about the tone, content, and impact of whatsupstream, as well as the reactions we were getting from Congress. I was not aware of any state legislation that might have been proposed by the Swinomish Tribe, nor did I ever engage in any discussions about Washington legislation with the Swinomish Tribe.”

#### **E. Response from Strategies 360**

On December 29, 2016, Jeff Reading, Vice-President of Communications for Strategies 360 sent an email to PDC staff responding to staff’s request for information concerning the allegations listed in the complaint and to several staff questions. **Exhibit #10.** Mr. Reading stated that Strategies 360 was retained by the Swinomish Indian Tribal Community to conduct a public opinion poll in 2012 and 2014, designed “to gauge the viability of a statewide ballot initiative to create mandatory streamside buffers in riparian farming zones.”

Mr. Reading stated that in 2012 and 2014, a ballot initiative was not pursued by the Swinomish Indian Tribal Community. He stated that there was nothing for the Swinomish Tribe to report to the PDC, and added that “Even in the event that an initiative was pursued, S360, as the polling firm, would not be the reporting entity: a theoretical campaign committee would be.”

Mr. Reading stated that in 2014, Strategies 360 assisted the Swinomish Tribe “in developing and launching an educational website regarding mandatory streamside buffers in riparian farming zones”, and they also purchased public radio underwriting ads and social media advertisements as part of those educational outreach efforts. He stated that Strategies 360 “merely provided a platform – in this case, a website – for the public to learn about an environmental issue – no different than any form of media – and purchased ads on behalf of our client to encourage people to visit the website.”

Mr. Reading stated that there was never any lobbying performed by Strategies 360 on behalf of the Swinomish Tribe, and therefore there was nothing for Strategies 360 to report to the PDC. He stated that during calendar year 2015, Strategies 360 assisted the Swinomish Tribe in relaunching the website, and purchasing public radio underwriting advertisements, but this time those efforts included purchasing billboard advertisements on behalf of the Swinomish Tribe, and adding a “take action” button on the website.

Mr. Reading stated that Strategies 360 was not the sponsor of a grass roots lobbying effort, reiterated there were no lobbying activities to report to the PDC.

Mr. reading indicated that “RCW 42.17A.640 makes a clear distinction between a sponsor of a campaign and a public affairs agency hired to assist.” He went on to state the following:

S360 merely provided a tool by which interested members of the public could contact their elected officials about an issue – no different than any other web services provider offering its clients a “legislative action center;” such providers are not required to report “lobbying activity” and neither was S360. In a separate analysis, S360 would be no more required to report “lobbying activity” than would a newspaper that ran a guest editorial urging readers to contact their legislators.

RCW 42.17A.640: “a program to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation.” No bill or specific regulatory change was being requested for support in any of the *What’s Upstream* materials whatsoever – the request to legislators was merely that they become more aware of the issue – therefore no grassroots lobbying campaign occurred, and therefore there was nothing to report to the PDC.

Mr. Reading noted that 51 letters were generated by the “take action” button on the *What’s Upstream* website, and added that “Fewer letters does not create less lobbying activity and more letters does not create greater lobbying activity.”

On January 3, 2017, Kevin J. Hamilton, an attorney with the Seattle Law Offices of Perkins Coie, submitted an additional letter on behalf of his client, Strategies 360. **Exhibit #11.** Mr. Hamilton stated that “Because Strategies 360 is a mere vendor of the target of Save Family’s Farming Complaint (which, in all events, appears remarkably weak), there is utterly no basis for any claim against Strategies 360.”

Mr. Hamilton stated that the complaint really targeted Larry Wassermann, the Environmental Policy Director for the Swinomish Tribe, the Tribe itself, and the EPA. He stated that Strategies 360 only worked on public relations consulting issues for the Swinomish Tribe, and that only a “sponsor” of a grass roots lobbying campaign must register and report with the PDC if the campaign is “intended, designed, or calculated primarily to influence legislation.” He reiterated that Strategies 360 was a vendor and not a sponsor of a grass roots lobbying efforts and therefore had no filing requirement with the PDC.

## **F. PDC Staff Findings**

The complaint alleges that Mr. Wasserman (in his position of employment with the Swinomish Tribe), Mr. McLerran (in his position with the EPA), and Strategies 360 engaged in grass roots lobbying and formed a political committee.

Grass roots lobbying involves “presenting a program to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation” as set out in RCW 42.17A.640:

(1) Any person who has made expenditures, not reported by a registered lobbyist under RCW 42.17A.615 or by a candidate or political committee under RCW 42.17A.225 or 42.17A.235, exceeding \*one thousand dollars in the aggregate within any three-month period or exceeding \*five hundred dollars in the aggregate within any one-month period in presenting a program to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation shall register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots lobbying campaign.

(2) Within thirty days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall register by filing with the commission a registration statement, in such detail as the commission shall prescribe, showing:

(a) The sponsor's name, address, and business or occupation, and, if the sponsor is not an individual, the names, addresses, and titles of the controlling persons responsible for managing the sponsor's affairs;

(b) The names, addresses, and business or occupation of all persons organizing and managing the campaign, or hired to assist the campaign, including any public relations or advertising firms participating in the campaign, and the terms of compensation for all such persons;

(c) The names and addresses of each person contributing twenty-five dollars or more to the campaign, and the aggregate amount contributed;

(d) The purpose of the campaign, including the specific legislation, rules, rates, standards, or proposals that are the subject matter of the campaign;

(e) The totals of all expenditures made or incurred to date on behalf of the campaign segregated according to financial category, including but not limited to the following: Advertising, segregated by media, and in the case of large expenditures (as provided by rule of the commission), by outlet; contributions; entertainment, including food and refreshments; office expenses including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount paid or incurred for lobbying campaign activities; consultants; and printing and mailing expenses.

(3) Every sponsor who has registered under this section shall file monthly reports with the commission by the tenth day of the month for the activity during the preceding month. The reports shall update the information contained in the sponsor's registration statement and in prior reports and shall show contributions received and totals of expenditures made during the month, in the same manner as provided for in the registration statement.

(4) When the campaign has been terminated, the sponsor shall file a notice of termination with the final monthly report. The final report shall state the totals of

all contributions and expenditures made on behalf of the campaign, in the same manner as provided for in the registration statement.

RCW 42.17A.640 (emphasis added).

The PDC's Lobbyist Reporting Manual notes that "Lobbyists can relieve their clients/employers from the responsibility of filing an L-6 report of grass roots lobbying by including the grass roots lobbying expenditures on their monthly lobbying L-2 reports, *provided* that the grass roots campaign is financed out of the employer's existing funds. If the employer conducts a special fundraising effort or accepts funds from other sources to finance the grass roots lobbying, L-6 reporting is required (and expenses would not be included on the L-2)."

The L-2 reports reviewed by staff, and the lobbying queries conducted by staff, disclosed that registered lobbyist Davor Gjurasic has been a contract lobbyist for the Swinomish Tribe dating back to at least calendar year 2012. Mr. Gjurasic had received more than \$409,000 in lobbying compensation and other lobbying related expenditures for lobbying activities undertaken on behalf of the Swinomish Tribe from January 1, 2013 through November 30, 2016, as detailed below:

1. Calendar Year 2016: As of November 22, 2016, Mr. Gjurasic disclosed \$43,899 in total lobbying activities undertaken during the first 10 months of 2016 that included \$42,500 in compensation, \$1,022 in personal expenses, and \$378 for advertising.
2. Calendar Year 2015: Mr. Gjurasic disclosed \$129,043 in total lobbying activities undertaken during calendar year 2015 that included \$85,755 in compensation, \$1,057 in personal expenses, \$41,850 in contributions made, and \$381 for advertising.
3. Calendar Year 2014: Mr. Gjurasic disclosed \$117,840 in total lobbying activities undertaken during calendar year 2014 that included \$72,000 in compensation, \$2,290 in personal expenses, \$43,350 in contributions made, and \$200 for advertising.
4. Calendar Year 2013: Mr. Gjurasic disclosed \$118,250 in total lobbying activities undertaken during calendar year 2013 that included \$72,000 in compensation, \$1,250 in personal expenses, \$44,800 in contributions made, and \$200 for advertising.

PDC staff reviewed the *What's Upstream* website which listed the following partners: Center for Environmental Law and Policy, Puget Soundkeeper Alliance, the Swinomish Indian Tribal Community, and the Western Environmental Law Center. The listed goal on the website is "to inform the public about leading causes of water pollution and how that pollution affects the health of Washington's waterways, people and fish.

The information on the *What's Upstream* homepage indicate the project was made possible by a grant from the NWIFC, funded by the EPA. The website included the caveat "The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

The website included the following information or statements made or listed under the categories “The Problem,” “Negative Effects,” and “The Solutions.”

Problem:

- “A number of these unregulated agricultural practices send harmful pollutants into our waterways, degrading our water, destroying vital habitat and endangering our fish.”
- “...the agriculture industry has been largely exempted from federal rules designed to achieve this goal, and our state has no permit system to regulate agricultural practices.”
- “In Washington, over three quarters of state water pollution clean-up funds were used to clear up water contaminated by agriculture between 2005 and 2013.”

[www.whatsupstream.com](http://www.whatsupstream.com) (emphasis in original).

Solutions: The solutions page references the 2012 and 2014 surveys, provided a link to “Learn more about Riparian Buffers” and included the following statements:

- “Streamside buffers help other industries, such as timber harvesting and land development, dramatically reduce stream pollution.”
- “Requiring 100 feet of natural vegetation between farmland and our waterways would keep most pesticides, fertilizers, cows and manure out of our streams. Trees and other natural vegetation alongside our waterways would promote healthy habitat for salmon.”
- “Three quarters of Washingtonians support stronger laws protecting the health of our water resources in Washington.”
- “Two-thirds of Washingtonians support 100-foot natural buffers between agriculture lands and streams.”

[www.whatsupstream.com](http://www.whatsupstream.com).

As previously noted, prior to staff’s review there was a “Take Action” link on the *What’s Upstream* website, which included a “CLICK HERE” button instructing the viewer to “tell your legislators it’s time for stronger protection of our water,” with an option for users to send a pre-written letter or to customize a letter and send through the website. The “Take Action” letter was directed to legislators, but this was the only legislative contacting activity found as part of this review.

Concerning the sponsors of the *What’s Upstream* website, the Puget Sound Partnership is a public agency that files public agency lobbying L-5 reports, and several of the sponsors are Lobbyist Employers that have hired a contract lobbyist registered with the PDC: The Center for Environmental Law and Policy (Bruce Wishart), Puget Soundkeeper Alliance (Mr. Wishart), the Swinomish Indian Tribal Community (Davor Gjurasic); and the Washington Environmental Council (Mr. Wishart and Cliff Traisman).

With regard to the allegation that Mr. Wasserman and Strategies 360 had formed a political committee. Staff did not find any evidence that either Mr. Wasserman or Strategies 360 had solicited contributions or made expenditures in support or opposition to any candidate or ballot measure.

#### **IV. PDC Staff Analysis**

The EPA provided federal funds to the NWIFC through a “cooperative agreement”, and did not have the authority or ability “to direct the content of the work product of the NWIFC or a recipient of a sub-award.” While the EPA has a direct relationship with the NWIFC as the awardee of the grant, the EPA had no agreement or formal relationship with any of the “sub-awardees” including the Swinomish Tribe.

The NWIFC, and not the EPA, was responsible for monitoring a sub award recipient's performance, ensuring compliance with the conditions of the grant and any applicable laws. The EPA and Mr. McLerran did not award any grant money or expend any federal funds directly to the Swinomish Tribe. In addition, neither Mr. McLerran nor the EPA directed that any of the grant funds be used for any specific purpose, including to support any lobbying or grass roots lobbying efforts in Washington state.

There was no evidence found during staff's review, or provided by the Complainant, indicating there were any grass roots lobbying activities performed by Strategies 360, either directly (which would have required them to register as a Lobbyist), or on behalf of the Swinomish Tribe. During calendar years 2012 and 2014, Strategies 360 assisted the Swinomish Tribe in conducting survey research, and in 2015, relaunching the website, and purchasing public radio underwriting advertisements.

Strategies 360's 2015 efforts also included purchasing billboard advertisements on behalf of the Swinomish Tribe, and adding a “take action” button on the website. Therefore, it appears that Strategies 360 was merely a vendor providing services for a fee, and had no reporting obligations with the PDC.

The Swinomish Tribe employed a registered lobbyist, Davor Gjurasic, who engaged in direct “advocacy on actual legislative issues” on behalf of the Tribe. Mr. Gjurasic is a contract lobbyist who has been filing lobbying reports with the PDC for many years, and was a contract Lobbyist for the Swinomish Tribe from 2013 to 2016, disclosing \$409,032 in total lobbying activities during the last four years that included compensation, monetary contributions made to candidates, and other lobbying expenses.

As noted in the response filed on behalf of Mr. Wasserman, as a result of Mr. Gjurasic's monthly lobbying L-2 reports filed with the PDC, “a record of any money spent by the Tribe on lobbying is fully available to the public on the PDC's website.” The EPA considered the work undertaken by the Swinomish Tribe as a sub-award recipient of the grant from the NWIFC to be a “public education and outreach effort.”

Mr. Wasserman's counsel further asserted that the public outreach efforts undertaken by the Swinomish Tribe as part of the *What's Upstream* activities "did not take any concrete steps to promote or oppose specific legislation and therefore did not undertake grass roots lobbying." They also noted that "To the extent Mr. Wasserman worked with the legislature on House Bill 2352, that activity was conducted through and in coordination with a registered lobbyist (Mr. Gjurasic) in full compliance with the law." (See Exhibit #5.)

PDC staff did not find that Mr. Wasserman spent personal funds, or the funds of the Swinomish Tribe, on grass roots lobbying. Since Mr. Wasserman spent no funds on grass roots lobbying activities, he is not considered a sponsor of a grassroots lobbying campaign in accordance with RCW 42.17A.640. Mr. Wasserman was also not required to register with the PDC as a political committee in support of a ballot measure since he never filed a ballot proposition, and he did not solicit or accept contributions or make expenditures in support of a ballot proposition.

Similarly, PDC staff did not find that Strategies 360 engaged in grass roots lobbying. While Strategies 360 did provide the Swinomish Tribe with a link on the *What's Upstream* website "by which interested members of the public could contact their elected officials about an issue" and that activity could have been considered a grass roots lobbying expenditure, it does not appear that the reporting threshold of \$1,400 was exceeded which would have required the disclosure on an L-6 report. Strategies 360 appears to be a vendor or service provider, rather than a lobbyist or political committee.

Mr. McLerran, the EPA Region 10 Administrator, does not appear to have spent personal funds, or directly authorized federal funds, for grass roots lobbying. There is no evidence to support that Mr. McLerran was engaged in lobbying activity.

## V. PDC Staff Recommendation

PDC staff recommends:

1. That the Commission take no action on the Citizen Action Complaint filed against Dennis McLerran and the Environmental Protection Agency, and send a letter to the Attorney General's Office recommending that he take no action as well.
2. That the Commission take no action on the Citizen Action Complaint filed against Strategies 360, and send a letter to the Attorney General's Office recommending that he take no action as well.
3. That the Commission take no action on the Citizen Action Complaint filed against Larry Wasserman, as an employee of the Swinomish Tribe, and send a letter to the Attorney General's Office recommending that he take no action as well.

**Investigative Review Exhibits**

- Exhibit #1** September 14, 2016, complaint filed by James a Tupper, Jr. against Larry Wasserman, Strategies 360, Inc, and Dennis McLerran, Region 10 Administrator for the Environmental Protection Agency (EPA).
- Exhibit #2** October 14, 2016, amended initial complaint providing additional information to the PDC is filed by Mr. Tupper.
- Exhibit #3** December 8, 2016, a second amended complaint providing additional information to the PDC is filed by Mr. Tupper.
- Exhibit #4** January 4, 2017, a third amended complaint providing additional information to the PDC is filed by Mr. Tupper Jr.
- Exhibit #5** December 1, 2016, emailed received with an attached response letter submitted on behalf of Mr. Wasserman by Brian Chestnut and Wyatt Golding, two attorneys with the Seattle Law Firm Ziontz Chestnut.
- Exhibit #6** December 19, 2016, email with an attached supplemental response letter submitted on behalf of Mr. Wasserman by Mr. Chestnut and Mr. Golding.
- Exhibit #7** November 3, 2016, Lisa Castanon, Acting Regional Counsel for Region 10 of the EPA, submitted a two-page response letter on behalf of Mr. McLerran, along with a two-page enclosure.
- Exhibit #8** December 22, 2016, Socorro Rodriguez, Office of Regional Counsel for Region 10 of the EPA, submitted a two-page response letter on behalf of Mr. McLerran and the EPA
- Exhibit #9** December 2, 2016, Sacorro Rodriquez, with the Office of Regional Counsel for Region 10 of the EPA, submitted a two-page response letter on behalf of Mr. McLerran, along with a four-page declaration from Mr. McLerran dated December 1, 2016.
- Exhibit #10** December 29, 2016, Jeff Reading, Vice-President of Communications for Strategies 360 sent an email to PDC staff responding to staff's request for information concerning the allegations listed in the complaint and to several staff questions.
- Exhibit #11** January 3, 2017, Kevin J. Hamilton, an attorney with the Seattle Law Offices of Perkins Coie, submitted an additional letter on behalf of his client, Strategies 360.