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October 14, 2016

(Via Email: pdc@pdc.wa.gov)

Ms. Evelyn Fielding Lopez
Executive Director
Washington State Public Disclosure Commission
P.O. Box 40908
Olympia, WA 98504-0908

Re: Larry Wasserman, Strategies 360, Inc., and Dennis McLerran
Amended and Supplemental Complaint re Unregistered Grass Roots
Lobbying

Dear Ms. Lopez:

Please accept this letter as an amended and supplemental complaint on behalf of Save Family Farming regarding unregistered grass roots lobbying conducted by Larry Wasserman, Strategies 360, Inc., and Dennis McLerran that was submitted to the Public Disclosure Commission on September 14, 2016.

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. Save Family Farming would also like to amend its complaint against Mr. Wasserman and Strategies 360 to add an additional violation for failing to register and report as a political committee formed to conduct an initiative campaign.

A. Supplemental Information Regarding Grassroots Lobbying

The recent disclosure of additional documents by the EPA reveal a clear intent to engage in grassroots lobbying from the beginning of the campaign in 2011. This is reflected in an anonymous internal EPA review of the Wasserman grant proposal in 2011. The EPA apparently concluded then, and has maintained since, that the campaign activities would not constitute unlawful lobbying using federal funds under “Federal laws, regulations and Office of Management and Budget (OMB) Circulars” because it did not involve contact with Congressional Representatives and Senators regarding specific federal legislation. (Ex. R, at

2.) As noted by the reviewer, however, the campaign would consist of activities that are clearly considered grassroots lobbying under Washington law. The proposed campaign was proposed to include: “one-on-one meetings with stakeholders and elected officials to inform target audiences capable of influencing public opinion and policy.” (*Id.*) Mr. Wasserman represented in his funding request that his campaign was “necessary to garner support for additional mechanisms to protect [and] restore water quality and fisheries resources within the Skagit Watershed.” (*Id.*)

Save Family Farming urges the Public Disclosure Commission to obtain a copy of the “Public Information and Education Strategic Plan” that was developed by Mr. Wasserman and Strategies 360 as part of the What’s Upstream campaign. This document was referenced in the Year 3 grant proposal and was specifically requested by EPA in comments on the proposal. (Ex. S, at 3.) The EPA requested that Mr. Wasserman include the plan as an attachment to the proposal to assist the EPA review of the campaign. (*Id.*) Mr. Wasserman deflected this request by stating the he had “attached the deliverable of this award that details Strategies 360’s summary of findings from the research conducted.” (*Id.*) We believe that the actual plan may document the intent and scope of the grassroots campaign and initiative campaign described below.

The intent and actual engagement in grassroots lobbying is further documented in a broadcast email from info@whatsupstream.com dated December 2, 2015, with the subject line “Re-launch of the “What’s Upstream campaign.” (Ex. T.) The email states:

We are pleased to announce that we have revamped our website and, starting today, are re-launching a very robust, six-month public information campaign – **just in time for the start of the 2016 legislative session.** Between now and next spring, we’re confident that you’ll see or hear our ads, which will span print, billboard, digital and radio media.

We invite you to have a look at the new website, and to share it broadly among your own networks. **Please note that the website includes a tool where concerned residents can send a message to their legislators urging action on this critical but neglected issue.**

Ex. T (Emphasis added.)

In December 2015 the EPA acknowledged both internally and externally that Mr. Wasserman was engaged in grassroots lobbying. In “Briefing/Talking Points – Whatsupstream.com” used by Dennis McLerran at meeting with the Washington Conservation Commission and other agencies Mr. McLerran acknowledges that as “anticipated, **the website provides a link enabling readers to send letters to state legislators generally urging stronger regulation to protect water quality from agricultural NPS.**” (Ex. U.) (Emphasis added.)

We suspect that Mr. McLerran had a direct and substantial role in shaping the grass roots lobbying effort. As described in our original complaint, Mr. McLerran met with Mr. Wasserman and his attorney by telephone on July 16, 2015. (Ex. F.) EPA staff noted this meeting internally on July 27, 2015. (Ex. G.) Prior to that meeting, the EPA staff had directed that Mr. Wasserman suspend any use of federal funds on the What's Upstream campaign. After the meeting with Mr. McLerran, EPA funding resumed and for the first time the What's Upstream website was proposed to have a "take action" link and pass through communication to the state legislature. The pass through communication to the legislature is very similar to the EPA use of a similar lobbying technique in a social media campaign to support its national rule on the definition of waters of the United States described in a 2015 Inspector General Report. (Ex. V, at 10.)

The grass roots lobbying campaign was further documented in an email exchange between Strategies 360 and the Northwest Indian Fisheries Commission (NWIFC) in March 2016. In an email dated March 23, 2016, Matt Davidson, from Strategies 360, to Dietrich Schmidt, at the NWIFC, described an "opportunity" to "increase our campaign results" with a Change.org petition. (Ex. W) Mr. Davidson explained that the Change.org petition would allow the What's Upstream campaign to build up its list of supporters and the ability to then **"use this list to message our supporters through social media to go to the What's Upstream website to contact their legislators."** (*Id.*, at 3)(Emphasis added.)

These additional documents confirm that What's Upstream was a grass roots lobbying effort within the meaning of RCW 43.17A.640. It was clearly a campaign "to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation" as provided in the statute.

B. Unregistered Initiative Campaign

The most recent FOIA release by the EPA includes several documents that detail an initiative campaign by Mr. Wasserman and Strategies 360 that should have been registered as a political committee. We do not know when this campaign started as Mr. Wasserman has not produced, despite a request from the EPA, a copy of the "Public Information and Strategic Plan" described above. We do know from the EPA documents that as early as 2013 Mr. Wasserman was attempting to use funds from the settlement of a law suit in Skagit County to fund the campaign. (Ex. X.)

An internal EPA briefing document dated January 6, 2014, discloses that the intended output for the federal grant would include an initiative in 2014. (Ex. Y.) After apparent objections by the EPA staff, this "output" was removed from the proposed grant work plan. (Ex. Z.) It does not appear, however, that there was any intent to drop the initiative campaign nor to use the federal funds to support an initiative. At a meeting on January 3, 2014, Tiffany Waters from the NWIFC described the efforts by Mr. Wasserman to decide on a filing

deadline for an initiative and disclosed that a “parallel survey” had been run to “see if [there is] support for [a] 2014 ballot initiative.” (Ex. AA, at 2.)

The 2014 polling report submitted with our original complaint (Ex. C) appears to be very much part of a parallel effort by Mr. Wasserman and Strategies to use federal funds to support their planned initiative campaign. That would explain why the poll screened out respondents who were not likely voters. It is precisely the type of focused polling and expenditure that would be used for a political campaign. Mr. Wasserman’s work plan submitted to EPA for 2016-2017 grant funding discloses that “Strategies 360 will be coordinating meetings with other collaborating entities and organizing the Swinomish Tribe’s signature gathering efforts.” (Ex. BB, at 11.)

Larry Wasserman and Strategies 360 have violated RCW 42.17A.205 by failing to file a statement of organization within two weeks of after they had an expectation of receiving or making expenditures in a campaign. This could have been as early as 2011 when EPA approved the original grant but certainly by 2013 when the initiative campaign first appears in the recently released documents by EPA. Mr. Wasserman and Strategies 360 are also in violation of RCW 42.17A.235 by filing timely a report of contributions and expenditures for the initiative campaign.

Save Family Farming appreciates your consideration of this supplemental and amended complaint. We are available at your convenience to answer any questions or provide additional information in this matter.

Sincerely,

TUPPER MACK WELLS PLLC

JAMES A. TUPPER

Attachments



United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle WA 98101

Not started FY12
work plan

Tiffany 1/3/14

- Complete process ✓
- Info each of consultants
- Strategic Work Plan - just research } Summary memo
all of surveying one in FY11 of the Strategic
add'l surveying Work Plan
- Outputs vs. deliverables
- Wednesday or Thursday LARRY (★)
↓
pm only
- FY11 - still spending -
 - survey, messages
 - planned media - paid media, ads
 - social media -
 - create content
 - earned media - when someone else is re-blogging your info
 - mkt. effectiveness
 - leader outreach
 - on-line ads
 - radio ads

PYD

Conduct survey
Conduct focus grps
Update educ. material
Conduct educ outreach

} is media
placement still
working?

Filing deadline - up in the air
Large scale coalition. Trying to decide.

⊛ How deep wld FOIA request go?

Relationship b/w 2014 ballot initiative

⊛ Sacramento can parallel survey to see if support
for ²⁰¹⁴ ballot initiative (not YEPA \$)

Yes, lots of support for ballot initiative

⊛ p. 1 - Fred o/c will be ballot initiative

↑
Clarity & Planning

1hc 1/2/14

PDC Exhibit #2 Page 7 of 67

Northwest Indian Fisheries Commission Grant Program

FY 2014 Noncompetitive Tribal Projects for Restoration and Protection of Puget Sound

Swinomish Indian Tribal Community Non-Point Pollution Public Information and Education Initiative – Year 5

Program Contact:	Larry Wasserman (lwasserman@swinomish.nsn.us) Environmental Policy Director 11430 Moorage Way La Conner, WA 98257
Phone Number:	360-466-7250; Fax 360-466-4047
Grant Name:	NWIFC FY 2014 Noncompetitive Tribal Projects for Restoration and Protection of Puget Sound
Project Period:	February 1, 2015 – January 1, 2016
Project Officer Name and Address:	Tiffany J. Waters Northwest Indian Fisheries Commission 6730 Martin Way East Olympia, WA 98516
Phone Number:	360-528-4318

1. **Project Title:** Non-Point Pollution Public Information and Education Initiative
2. **Workplan Abstract:** Implementation of current state and local regulations, and the regulations themselves, have been shown to be inadequate to protect water quality and fish habitat. This project proposes to continue our public education effort that will be directed at decision makers and the general public to improve the standards and implementation of best management practices, and to increase the level of regulatory certainty that instream resources will be protected, consistent with the Skagit Chinook Recovery Plan.
3. **Tribe:** Swinomish Indian Tribal Community
4. **Project Location:** Efforts will be directed at both the Skagit Watershed and throughout Puget Sound.
5. **Eligible Activities to be Addressed:**
 - a. Skagit Chinook Recovery Plan (A.6.1)
 - b. Support local governments to adopt and implement plans, regulations, and policies consistent with protection and recovery targets, and incorporate climate change forecasts (A 1.2)

- c. Improve, strengthen and streamline implementation and enforcement of laws, plans regulations and permits consistent with protection and recovery targets (A 1.3)

- 6. **Proposed Starting and Ending Dates:** February 1, 2015 – ~~January 1, 2016~~ May 1, 2017
- 7. **Project Coordinator:** Larry Wasserman, Swinomish Indian Tribal Community Planning Department, 11430 Moorage Way, LaConner, WA 360-466-4047 (fax), 360-466-7250 (office), lwasserman@skagitecop.org; winomish.nsn.us

Field Code Changed

8. Project Narrative

a. Need for Project:

Completion of the proposed project is a top priority for the Swinomish Tribe. Numerous studies conducted within the Skagit watershed have demonstrated that non-point pollution and the lack of riparian vegetation have significant negative impacts on fisheries resources. Two TMDL studies have been conducted by the Department of Ecology (DOE) for the Skagit River and its lower tributaries (Pickett, 1997; Zalewsky & Bilhimer, 2004). The studies explain that many streams are currently on the Clean Water Act 303(d) list as result of high temperatures, low oxygen, and fecal coliform, which in turn is the result in large measure of inadequate riparian buffers and unrestricted cattle access. TMDL's, when developed, have either not been implemented or are not adequate to alleviate the source of pollutants.

Skagit Chinook Recovery Plan

The following is excerpted from the Skagit Chinook Recovery Plan (SRSC & WDFW, 2005) that speaks broadly to how the work proposed within this workplan is seeking to implement this Plan:

"Successful habitat protection depends on three important components. First is a public that recognizes the importance of salmon habitat protection, and that does not condone actions by others that do harm to these resources. This sentiment should be nurtured through a vigorous public information effort, and by providing the technical information to assist landowners and others in their efforts to comply with existing regulations. Technical and financial resources should also be made available to those who voluntarily want to do even more to protect and restore salmon habitat if they so choose. Providing people with the information to make informed decisions that will be protective of salmon habitat when working in and around streams is the first step towards habitat protection. To summarize, providing people the tools to "do the right thing" capitalizes on the vast majority of the public that wants to provide for a future for Skagit River Chinook.

A second factor and one that needs to be implemented concurrently with the first step is an unambiguous regulatory framework that insures that the habitat needs of the fisheries resource are fully protected, either through avoidance of impacts or through the full mitigation of unavoidable impacts. The regulations should provide sufficient clarity to landowners and other project proponents about what standards need to be met, and what actions are unacceptable.

These regulations must be applied equally to all, with assistance from implementing agencies so that people can understand the necessity of the regulated actions, and how they can comply.

Finally, there needs to be an enforcement presence to insure that those that choose not to follow the rules will be held accountable. This is important for a number of reasons. First and foremost, vigorous enforcement provides a deterrence to those that might otherwise try to circumvent or ignore existing regulations. Also important is that an active enforcement process indicates to those that are abiding by the rules that others will be held to a similar standard, and that there is an even playing field for everyone that needs to work in and around streams. Finally, a vigorous enforcement presence indicates to the public that these matters are an important public policy, and that the authorities with jurisdiction take their responsibilities seriously and are committed to ensuring that salmon protection is an important priority" (2005, p.78).

Specific Skagit Chinook Recovery Plan recommendations that this project seeks to educate stakeholders and decision makers on the need to address include:

- Recommendation 20 - Development of "a regulatory framework in the form of an Agricultural Practices Act, a Riparian Protection Act, or the mandatory use of Farm Plans based on Best Management Practices (BMP) based on Best Available Science (BAS). *The commitment to enforce these regulations, is a necessary component to protect water quality within the Skagit Basin*" (emphasis added, p.86) .
- Recommendation 21 – "Assist and support development of Total Maximum Daily Load (TMDL)s for each of the Chinook streams listed on the 303(d) list in the Skagit River Basin. *Identify and implement the measures necessary to meet water quality standards. These measures should become part of either local or state regulations to ensure their implementation*" (emphasis added, p.87).
- Recommendation 24 – "The Shorelines Management Act currently exempts agricultural practices, which inadequately protects essential Chinook habitat. Protecting this habitat requires modification of the Shorelines Management Act to eliminate the exemption for agricultural practices, or to develop alternative mechanisms that provide equivalent levels of protection" (p.87).
- Recommendation 28 – "Ensure the adequacy of water quality violation investigations and follow up, and review the adequacy of BMPs as implemented" (p.87).

Unfortunately, since the Chinook Recovery Plan was adopted by NOAA nine years ago, there has been little change in the regulatory structure or the degree of implementation of these measures. There has also been little local support for adoption or enforcement of regulations to meet water quality standards. Unless decision makers and the general public are made aware of the sources of pollution, the adequacy of currently regulations, and the need for additional enforcement, it is unlikely that water quality will improve or that fisheries resources will be protected.

The Swinomish Tribe is cognizant that the Puget Sound Partnership currently engages in a Puget Sound-wide public outreach and education campaign (Puget Sound Partnership, 2006). Their broad goals include: "Increase public awareness/concern about Puget Sound – and the land around it...; Make improving the health of Puget Sound a public priority; Build broader and

deeper support that can be translate into voter or legislative action for comprehensive solutions; Encourage behavior change; [and] Elevate Puget Sound as a national environmental asset on the same level as the Chesapeake Bay or the Florida Everglades” (Puget Sound Partnership, 2006). While a broad Puget Sound wide protection and outreach is important, regional stakeholders and decision makers within the Puget Sound region are diverse and, we believe that for Skagit Watershed water quality to improve, there is a crucial need for targeted information to stakeholders and decision makers to support improved regulatory mechanisms to protect and restore water quality and fisheries resources within the Skagit Watershed and throughout Puget Sound.. We believe that the implementation of our public information and education initiative will fill a critical need, for the benefit of both our fisheries and water quality for the whole community.

Under Year One of funding, Swinomish developed, via contractor, a Public Information and Education Strategic Plan. Methodologies for the development of this Strategic Plan included: introductory meetings between the consultant and Swinomish to discuss the current water quality regulatory deficiencies and appropriate literature to review; a comprehensive water quality literature review and discussions with a number of subject matter experts around the state; a statistically valid quantitative research survey regarding public opinion of water quality that was conducted in July 2012, using a sample of 600 people from across the state; and in-person interviews of approximately two dozen water quality stakeholders from a wide range of backgrounds, also distributed around the state. The survey and in-person interviews focused on: 1) perceptions of water quality in WA State; 2) value/perceptions of water quality protections and regulations; and 3) value/perceptions of governance (local, federal, private sector) in relation to water quality.

It was determined that any attempt to improve water quality laws and enforcement in Washington will require an intensive period of public education (to both the general public as well as opinion leaders) to overcome perceptual problems. To achieve change, the problems with water quality in Washington need to be framed in ways that resonate with average citizens, such that they are educated that:

- o The scenic appearance of Puget Sound, rivers and lakes hides a growing and dangerous water quality problem.
- o That problem represents a threat to the health, safety and economic well-being of future generations of Washingtonians.
- o The water quality problem can be solved without exorbitant cost to the average citizens.

Taking Year One findings and Strategic Plan Development into account, Year Two of this funding’s workplan focused on building partnerships to educate the public and stakeholders on the sources of pollution, the inadequacy of currently regulations, and the need for additional enforcement to improve water quality, and water quality print and radio ads and materials that can be used for that purpose. Year three of this plan focused on measuring and refining the effectiveness of our messages. Polling data indicated very strong support for the establishment of regulatory buffers on agricultural land in order to protect water quality. Strategies 360, the

Tribes's consultant on this project to date, would assist the Tribe in supporting an outreach effort along with other collaborating organizations.

b. Project Tasks, Outputs, and Outcomes.

This project will continue to implement recommended elements of the public information and education strategy developed during previous years with the intent of supporting efforts to strengthen nonpoint pollution regulations. The goal of effort in Year 5 will be to raise awareness in both the public and decision makers about accountability in the agriculture industry where nonpoint-source pollution and our state's water resources are concerned, and to encourage regulators and legislators to adopt more protective approaches in the future.

1. Task: Continue to refine messages for robust, coherent public information campaign through highly visible distribution channels, leveraging content from website, scientific data, opinion research conducted in Task 1 of FY 11 and Task 2 and 3 of FY 13, and using insights for digital marketing conducted in Task 2 below.
Output: Message refined to reflect behavior patterns expressed in response to digital marketing efforts, represented in advertising content and on the website.
Cost: \$5,000
2. Task: Conduct digital marketing campaign using display, search and social media advertisements, utilizing demographic and consumer targeting, with messages developed in Task 1 above and consistent with Task 3 in FY 11.
Output: 40,000 new unique visits to website.
Cost: \$37,450
3. Task: Conduct outreach to at least five allied stakeholder groups for mutual support and third-party validation, including the Western Environmental Law Center, People for Puget Sound, Puget Soundkeeper Alliance, Center for Environmental Law and Policy, the Washington Environmental Council, Puget Sound Partnership, the Fish Commission and the Environmental Protection Administration. This task is consistent with Task 6 in FY11.
Output: Outputs include mutual message alignment, support and amplification; use of stakeholder logos on the What's Upstream website; stakeholder newsletter and website promotion of What's Upstream campaign.
Cost: \$2,000
4. Task: Provide for a minimum of 4 ads in Washington newspapers, building on Task 2 in FY 11, Task 4 in FY 12 and Task 5 in FY 13.
Output: 4 paid print ads, with distribution in the Seattle Times, Bellingham Herald and the Skagit Valley Herald.
Cost: \$3,000

5. Task: Provide for a minimum of two billboard displays in Puget Sound, with distribution in King, Skagit and Whatcom counties.
Output: Two billboard displays for duration of campaign.
Cost: \$25,000

6. Task: Ongoing project management.
Output: Ongoing coordination of efforts by Strategies 360, including regular, biweekly check-ins, detailed expenditure reports on invoices, and assistance in completing grant reporting requirements.
Cost: \$20,000

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9. Task: Refine messages for renewed, robust, coherent six-month public information campaign through highly visible distribution channels, leveraging content from existing website, scientific data, and opinion research conducted in Task 1 of FY 11 and Task 2 and 3 of FY 13.
Output: Message refined to be more assertive, substantive and action-oriented, reflected in advertising content and on the website.
Cost: \$5,000

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10. Task: Place earned media stories in relevant print, television, radio and online channels that support the messaging in Task 1 above, consistent with Task 5 in FY 11 and Task 4 in FY 12.
Output: At least three stories placed, including a guest editorial by Chairman Brian Cladeo by in the Skagit Valley Herald and/or the Seattle Times.
Cost: \$10,000

11. Task: Conduct outreach to at least five allied stakeholder groups for mutual support and third-party validation, including the Western Environmental Law Center, People for Puget Sound, Puget Soundkeeper Alliance, Center for Environmental Law and Policy, the Washington Environmental Council, Puget Sound Partnership, the Fish Commission and the Environmental Protection Administration. This task is consistent with Task 6 in FY 11.
Output: Outputs include mutual message alignment, support and amplification; use of stakeholder logos on the What's Upstream website; stakeholder newsletter and website promotion of What's Upstream campaign.
Cost: \$10,000

12. Task: Provide for a minimum of 18 ads in Washington newspapers, building on Task 2 in FY 11, Task 4 in FY 12 and Task 5 in FY 13.
Output: 12 paid print ads, with distribution in the Seattle Times, Bellingham Herald and the Skagit Valley Herald.
Cost: \$17,450

~~0. Task: Provide for a minimum of four billboard displays in Puget Sound, with distribution in King, Skagit and Whatcom counties.~~

~~Output: Four billboard displays for duration of campaign.~~

~~Cost: \$45,000~~

~~0. Task: Ongoing project management.~~

~~Output: Maintain tight coordination with Swinomish Indian Tribal Community, including regular, biweekly check ins, detailed expenditure reports on invoices, and assistance in completing grant reporting requirements.~~

~~Cost: \$5,000~~

Project Timeline – Year 4:

May 2015 – January 2016 May 2017

All activities for Tasks 1-6 will be conducted continuously from Nov 2016-May 2017.

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Activity	May	Jun	July	Aug	Sept	Oct	Nov	Dec
Task 1: Message development								
Task 2: Earned media placement								
Task 3: Stakeholder outreach								
Task 4: Print advertising								
Task 5: Billboard displays								
Task 6: Project management								

9. Budget – Year 4:

a. Annual Budget Summary:

Salaries	
Fringe Benefits	
Travel	
Supplies	
Communications/Utilities	
Equipment/Vehicle Rental	
Equipment/Vehicle O&M	
Sub-Contracts	
Capitalized Equipment	
Professional Services	92,450
Other (training)	
Total of Direct Costs	92,450
Indirect Costs	\$0
Grand Total	\$ 92,450

- 9 a.** Task Breakdown: See Appendix 2
9b. See 8 b.

10. Project Management:

The project management will be overseen by Larry Wasserman, Swinomish Environmental Policy Director. Through regular meetings with key staff and project consultants the project's timelines, deliverables, and reports will be evaluated to insure that project goals are met. Funding for project management, with exception of the supplies costs described within the narrative and budget, will be from internal Tribal funds.

11. Local Coordination and Project Cooperators:

We plan to be extensively connected to local partners through the building of the partners that occurred in previous years of this funding.

12. Technical Review: N/A

13. Severability: N/A

14. Agricultural Lands Riparian Buffer: N/A

15. Non-duplication: No other federal funding will be contributing to this project. All funding supporting project management will come from internal tribal funds

16. References: N/A

Appendix 1.

Annual Budget Summary for FY 2013 PSP/EPA Workplans

Salaries	0
Fringe Benefits	0
Travel	0
Supplies	0
Communications/Utilities	0
Equipment/Vehicle Rental	0
Sub-Contracts	0
Capitalized Equipment	0
Professional Services	92,450
Other	0
Total Direct Costs	92,450
Indirect Costs	0
Grand Total	92,450

Appendix 2

b. Task Delineated Budget:

	Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Total
Salaries							
Fringe Benefits							
Travel							
Supplies							
Communications/ Utilities							
Equipment/Vehicle Rental							
Equipment/ Vehicle O&M							
Sub-Contracts							
Capitalized Equipment							
Professional Services	\$10,000	\$77,450	\$5,000	3,000	25,000	20,000	\$92,450
Other (training)							
Total of Direct Costs	10,000	77,450	5,000	3,000	25,000	20,000	\$92,450

Indirect Costs							0
Grand Total	40,000.5000	77,450.37.450	5000.2000	3000	25,000	20,000	\$ 92,450

Appendix 3

Budget Narrative:

Professional Services: The amounts listed for each task were provided by the Strategies 360, the consultant that we plan to retain for this project. A competitive bid process was conducted under Year One of this funding and Strategies 360 was selected. They are uniquely qualified to continue this work as they developed the Strategic Plan. Strategies 360 will be coordinating meetings with other collaborating entities and organizing the Swinomish Tribe's signature gathering efforts

EPA Reviewer (Consolidated comments, 3 reviewers)**Tribe/Proposal: Swinomish – Non-Point Pollution Public Info & Education**

The following are consolidated comments from 3 EPA reviewers.

1) More substantive detail would better enable constructive review. Section B ("Project Tasks, Outputs and Outcomes") provides only very basic information about process, but does not provide substantive information about the tasks that would help us provide more constructive input. The applicant should summarize what has been learned from Year 1 efforts so far to provide some of this substantive information and context. Specifically, more detail on what has been learned or accomplished so far in the identification of target audiences and general message development would be helpful in Section B. This information would help reviewers evaluate whether the proposed work will affect behavioral changes in individuals that would lead to decreased impact on the ecosystem.

2) Partnerships. One overall recommendation we had for the Year 1 proposal was for the applicant to reach out to more potential partners. Given the extensive other activities occurring in the Skagit (see those that we summarized in our Year 1 comments), and existing/evolving relationships among these players, how will progress happen with the proposed work if other players with a significant role in land use and practices are not involved in any way?

3) Communication with Puget Sound Partnership outreach and education program. We appreciate the applicant's awareness and consideration of the Partnership's efforts (p. 2, bottom, "While PSP currently engages in a Puget-Sound-wide public outreach and education campaign...we have deemed that this project is necessary to garner support for additional mechanisms to protect and restore water quality and fisheries resources within the Skagit Watershed"). While the additional work undertaken by the tribe may well be above and beyond anything the Partnership is currently undertaking, we still wish to encourage the Tribal staff to contact the PSP (Dave Ward specifically) to at least communicate about respective efforts, and possibly find areas where the two organizations can consult with and coordinate efforts. PSP is doing a lot of research and they are already conducting regional surveys through the large outreach, education and stewardship grant they are implementing. PSP also has funds in their grant for social media and other outreach mechanisms for region wide messaging and then they are working with the local Eco-Net works for local messaging. They are also providing social media kinds of training for the Eco-Nets - they have developed a partnership with qualified trainers at the University of Washington (perhaps this is the training mentioned on p. 7 of the proposal? If not, the applicant might consider this training).

4) A sound approach to achieve the objectives of the "Eligible Activities" would focus on behavior. Such as informing people on how to comply with rules and regulations, and raising public awareness for the purpose of reducing the discharge of non-point source pollution into surface streams. Or, as stated in Activity E.4. "encourage individual stewardship."

5) Comment on Task 2. Who is your target market? Five print ads in Washington newspapers could mean advertising in the Seattle Metro area, which is very expensive and probably not addressing your target market. Advertising in the Skagit Valley Herald or the numerous weeklies in the area would allow more than 10 full page ads.

6) Comment on Task 3. What was the basis for estimating costs for ad campaigns on social media platforms? Social media advertising is very inexpensive. Have they any data on how many ads on which networks, and to identified audiences?

7) Comment on Task 4. What was the basis for estimating costs for development of print, online and audio materials? Creating content is very expensive. They list development of audio materials, but no video. Not sure where the audio is going to be used. Podcasts? Radio PSA's? Video tends to be more viral and can be integrated into the numerous social media platforms listed in Task 3.

8) Comment on budget: Should "Direct Costs" include the Professional Services line item?

9) Lobbying. Federal laws, regulations, and Office of Management and Budget (OMB) Circulars control the use that can be made of Federal funds for political activity, including lobbying. In reviewing the proposal and relevant regulations, we believe that the proposed work would not violate the anti-lobbying provisions of 40 C.F.R. part 34, which is incorporated into EPA's cooperative agreement with NWIFC.

However, there may still be public perception issues related to the proposed tasks and how they relate to lobbying. For example, 8.b. first paragraph says the work will entail: "...one-on-one meetings with stakeholders and elected officials to inform a target audience capable of influencing public opinion and policy." On 8.b.6. the proposal mentions "direct person to person outreach with community leaders and organization executives to discuss findings and to solicit support." Furthermore, the proposal states on p. 2, under "Need for Project," that "there has been little local support for adoption or enforcement of regulations to meet water quality standards...While PSP currently engages in a Puget Sound-wide public outreach and education campaign...we have deemed that this project is necessary to garner support for additional mechanisms to protect and restore water quality and fisheries resources within the Skagit Watershed.

It might be appropriate, in light of possible public perception concerns, that the origins of the proposed work in the Skagit Chinook Recovery Plan, and the Puget Sound Action Agenda, be highlighted even more strongly than they already are in the proposal. Providing this context would allow a reader to see (if I am correct in my understanding) that this work actually could be said to implement the Recovery Plan and Action Agenda (rather than constituting a grass roots lobbying effort conceived of by the applicant). I am thinking of two passages in particular from the 2008 Action Agenda, and the 2005 Recovery Plan, that support this perspective:

Implement the regional salmon recovery plans as an integral part of Puget Sound restoration. The salmon recovery plans are a cornerstone of the efforts to improve the health of the Puget Sound ecosystem. The data, planning, and community commitment that have gone into the recovery plans overlap with and

complement Puget Sound recovery efforts. The Puget Sound Partnership is responsible for implementing the regional salmon recovery plans for Chinook and summer chum salmon that have been approved by the National Oceanic and Atmospheric Administration (NOAA) (p. 6, 2008 Action Agenda).

And, from p. 78 of the Skagit Chinook Recovery Plan 2005:

Successful habitat protection depends on three important components. First is a public that recognizes the importance of salmon habitat protection, and that does not condone actions by others that do harm to these resources. This sentiment should be nurtured through a vigorous public information effort, and by providing the technical information to assist landowners and others in their efforts to comply with existing regulations. Technical and financial resources should also be made available to those who voluntarily want to do even more to protect and restore salmon habitat if they so choose. Providing people with the information to make informed decisions that will be protective of salmon habitat when working in and around streams is the first step towards habitat protection. To summarize, providing people the tools to “do the right thing” capitalizes on the vast majority of the public that wants to provide for a future for Skagit River Chinook.

A second factor and one that needs to be implemented concurrently with the first step is an unambiguous regulatory framework that insures that the habitat needs of the fisheries resource are fully protected, either through avoidance of impacts or through the full mitigation of unavoidable impacts. The regulations should provide sufficient clarity to landowners and other project proponents about what standards need to be met, and what actions are unacceptable. These regulations must be applied equally to all, with assistance from implementing agencies so that people can understand the necessity of the regulated actions, and how they can comply.

Finally, there needs to be an enforcement presence to insure that those that choose not to follow the rules will be held accountable. This is important for a number of reasons. First and foremost, vigorous enforcement provides a deterrence to those that might otherwise try to circumvent or ignore existing regulations. Also important is that an active enforcement process indicates to those that are abiding by the rules that others will be held to a similar standard, and that there is an even playing field for everyone that needs to work in and around streams. Finally, a vigorous enforcement presence indicates to the public that these matters are an important public policy, and that the authorities with jurisdiction take their responsibilities seriously and are committed to ensuring that salmon protection is an important priority.

If consistent with the applicant’s aims and purpose, perhaps these passages could be integrated into the proposal.

Chang, Lisa

From: Tiffany Waters [twaters@nwfc.org]
Sent: Monday, August 19, 2013 12:50 PM
To: Chang, Lisa
Subject: Swinomish Year 3 Public Information and Education Response
Attachments: EPA comments on Swinomish Yr 3 Outreach proposal.docx; Water Quality deliverable memo.docx

Hello Lisa,

(b) (6) was finally able to connect with Larry regarding Swinomish's FY12 Public Information and Education response document. The combination of both of our summer schedules delayed things a bit more than I thought. I've enclosed his response document and deliverable report from the Year 1 grant. Larry is willing to have a phone conversation with the EPA if any follow-up questions arise. As an FYI, he is planning on meeting with the PSP in the next two months for communication and data sharing.

I hate to place pressure, particularly given how long it has taken us to get back to you about review comments, but the sooner we can connect about this, the better. I was very much hoping that we could connect mid-next week? That doesn't give you a great deal of time though to line up your reviewer. If it is possible though, I know that Swinomish would be GREATLY appreciative.

I've been working with Skokomish lately as well, so I will be sending you their response document for the FCR study as well. Trying to get these last FY12 contracts resolved and contracted before FY13 descends!

Many thanks,
Tiffany

Tiffany Waters
 Puget Sound Recovery Projects Coordinator
 6730 Martin Way E., Olympia, WA 98516
 (p) 360.528.4318

Call Dave Ward

Discussion TTW 9/11/13

- 1) QAPP - ~~discuss with MWSP~~ *no, but for him to sign, check in. (Swinomish definitely should)*
- 2) P&E/CR - *no - some question here but there is some problem for ed. doing in this case*
- 3) Technical review - discuss /PSP; include on WQ (could be someone appropriate expertise (lead on, e.g.)).

EPA comments on Swinomish Outreach and Education proposal, year 3

Thank you for the opportunity to review the proposal for the 3rd year of work on this project. We appreciate the applicant's leadership in using the potentially powerful tool of outreach and education to advance Puget Sound protection and restoration efforts in the Skagit watershed. We also appreciate the effort the applicant has made to address some of our comments on earlier proposals. The following are some additional comments on this year's proposal.

1. The applicant discusses, on pp. 3-4, the broader Puget Sound-wide outreach efforts led by the Puget Sound Partnership, but emphasizes that there is a "crucial need for targeted information regarding regulatory mechanisms to protect and restore water quality and fisheries resources within the Skagit Watershed and throughout Puget Sound" (top of p. 4). But proposed Task 2 is a statewide survey of attitudes and support about salmon and about water and habitat quality. The applicant should explain why, in light of the discussion on pp. 3-4 emphasizing the need for an education and outreach effort that, unlike the region-wide PSP effort, is targeted in terms of geography and content, Task 2 is designed as a geographically broad survey that is not specifically focused on regulatory issues.
 - In regards to why a statewide survey of attitudes and support for salmon, water quality, and habitat quality is proposed, rather than a targeted Skagit Watershed and/or Puget Sound survey, Swinomish and Strategy 360 collaboratively deemed that a statewide survey was necessary as Puget Sound regulatory change will most likely require statewide regulations. As statewide regulatory change is the most likely route to protect and restore Puget Sound water quality and fisheries, then it is necessary to capture the broader understanding of statewide views so that statewide support can be assessed and then garnered. The Partnership's current outreach and education efforts have been focused on *voluntary* change from Puget Sound residents, which is consistent with a Puget Sound-specific campaign. However focusing on voluntary change has not been successful in the Skagit watershed, which is why regulatory change and implementation is one of the Skagit Chinook Recovery Plan's highest priorities¹. That lack of voluntary change and success, coupled with the lack of success of the current regulations to stop the continual statewide habitat loss and degradation², has led Swinomish to conclude that this new approach is desperately needed.
2. The proposal, on pp. 4-5, describes the workplan for Year 2 (CY 2013) and explains that the Year 2 work plan was revised with the help of NWIFC. The Year 2 tasks described at the top of p. 5 do

¹ Skagit Chinook Recovery Plan. (2005). Skagit River System Cooperative & Washington Department of Fish and Wildlife. Retrieved on March 14, 2012 from: <http://www.skagitcoop.org/documents/SkagitChinookPlan13.pdf>

² Northwest Indian Fisheries Commission (NWIFC). 2012. State of Our Watersheds Report. NWIFC, Olympia WA. 336p.

In addition to testing the efficacy of the print, social and radio ads, we will be utilizing the surveys to assess, and if need be, adapt the content of the ads.

4. Budget Narrative, p. 10. In our Year 2 comments, we raised some questions about the bases of the content and dissemination costs in the Year 2 budget. The applicant states that the bases for all cost estimates was its consultant, but the applicant should briefly describe what bases Strategies 360 used to develop these estimates.
 - As shown within the workplan, the scope of services is delineated and general cost estimates provided. However, outside of the information provided, Strategies 360 does not provide a further cost breakdown. For the Year 1 work, Swinomish conducted a full competitive bid process in which a statement of work was written, a request for qualifications was posted in the local newspaper and online, and bids were received. Strategies 360 was the contractor that was selected based on the capability and qualifications of the bidders, the likelihood of the bidder's success, and the lowest price. We have continued to contract with them for the Year 2 and Year 3 work as they are uniquely qualified to continue this work. We are confident in the cost estimates that they have provided.
5. It would be helpful to reviewers if the applicant provided, as an attachment to the proposal, the "Public Information and Education Strategic Plan" mentioned on p. 4 of the proposal. In our Year 2 comments (see comment 1 from our Year 2 comments), we stated that more detail on what has been learned or accomplished so far in the identification of target audiences and general message development would help reviewers evaluate whether the proposed work would affect behavioral changes. The opportunity to see the Strategic Plan seems like it could go a long way to providing very helpful background to enable a more productive review.
 - We have attached the deliverable of this award that details Strategies 360's summary of findings from the research conducted.
6. Under Task 2 of Year 3, the applicant will conduct a second survey. The applicant should provide more detail about this survey – for example, what specific questions/hypotheses will be tested, how the results will be used to inform and shape work in years 4-6 of this project.
 - The second survey is designed to test the efficacy of the print, social and radio ads and thus, will be mainly re-testing the first year's survey. Please refer to Strategies 360's summary of findings for more information on the survey conducted.
7. P. 10, "Technical Review." The applicant indicates that technical review is not applicable to this project, but I think technical review is very relevant to this project, as the project involves specific quantitative technical methods (surveys) and specific expertise (education and outreach). I am thinking that the applicant may actually almost be there in terms of lining up appropriate technical review, though, and may just need to tweak the workplan to address this need. First, perhaps it would be possible to identify a potential stakeholder or partner, as part of the Year 2 Water Quality Coalition development task, with the appropriate technical expertise, who could provide technical input and advice during the project as part of their role as a member of the Coalition. In addition, under the Year 2 workplan, the applicant states that it will communicate with PSP for potential coordination and data sharing. Perhaps the applicant could add to this existing task that PSP would also be asked – since they are leading a major

seem appropriate, but more information on these tasks and their outputs would be helpful in evaluating the Year 3 tasks (we have not seen the updated Year 2 workplan).

- a. For example, the inclusion of strategic planning with partners and the development of a Water Quality Coalition is a great idea and has the potential to be extremely valuable and we very much appreciate its inclusion in the Year 2 workplan. It would be helpful, though, if the applicant at least briefly describes the envisioned role/utility of the coalition/partners. Then, the applicant should, as part of the Year 3 workplan, describe what roles and functions the Coalition is expected to provide for Year 3 tasks.
- The partners for the Water Quality Coalition are currently being identified and assessed as a part of the Year 2 work, which has just recently begun (see most recent FEATS). Organizations that have been contacted include fishing groups, environmental groups, water quality and toxins coalitions, and conservation-minded organizations. Swinomish and Strategies 360 currently envision the role and/or utility of the prospective partners to be to assist in developing common messages and organizational objectives, assigning and partitioning coordinated outreach tasks, and building a strong collaborative voice and platform for support for regulatory change.
- b. I urge the applicant to give careful thought to the composition and design/charge to the Coalition members. What input/advice would be sought from them? What kind of representation would be most valuable to the project? There may be examples among other subawardees of ways of designing a steering group/coalition (e.g., the coordinating committee established under the Nisqually subgrant to Long Live the Kings for a marine survival research program).
- We appreciate this comment as we have given this issue very careful thought. Swinomish's goal is clear and the pathway to said goal (regulatory change) is relatively set. As such, we have been careful as to which groups we have contacted. We have had extensive internal conversations as to the best way to engage with the public at large and which constituents will be necessary to garner support for regulatory change. The groups that we have contacted thus far are like-minded organized and ones that have the ability to provide technical expertise necessary to achieve our goals.
- We have received the Marine Survival in the Salish Sea workplan from NWIFC that details Long Live the King's separation of a coordinating committee and technical team. We will fully review this workplan and, if we need additional information, will ask NWIFC for the appropriate contact information for the Nisqually and/or Long Live the Kings coordinator.
3. The Year 2 task entitled "Print and Radio media ads" seems to be redundant with Tasks 4 and 5 in the Year 3 workplan. The applicant should explain the difference between these two efforts to develop and deploy the media ads.
 - Included in the Year 2 workplan contract amendment was a revision to the timeline of the print, social and radio media ads task. The Year 2 timeline has been revised to reflect a more accurate start and end date for the Year 2 contract and, as such, the Year 2 and Year 3 timelines are not overlapping. Surveys have been built in to test the efficacy of the print, social and radio ads, which need to be continuously running in order to educate the public.

sound-wide and education effort – to provide technical input and advice during the life of this project. I do think it is important and potentially valuable to the project to provide for technical review, and I do not think the applicant is very far from having something appropriate on this.

- We appreciate the suggestion and do plan on engaging our partners to collaboratively develop the outreach strategy and, as such, provide technical input and advice during the project as part of their role as a member of the Coalition. As the Coalition members continue to emerge and cement, we will look to our partners to develop a more formalized technical review of the project.

TO: Larry Wasserman, Swinomish Tribe

FR: Strategies 360

**RE: Summary of Findings:
Water Quality Education**



OVERVIEW

This memo outlines findings from recently completed research and educational efforts concerning Washington's water resources. We performed research to develop an understanding of the perceptions of water quality and potential messages that would explain the problem statement and a variety of solutions. This research revealed that a strong majority of our state's citizens value clean water generally – especially for public health reasons – and prioritize protecting the supply and quality of water for future generations. However, this work also revealed significant disconnects and misconceptions. Water quality is not a top-of-mind concern for most Washingtonians and their opinions on this issue are malleable. There is no clearly defined problem in peoples' minds, as most *do not* perceive a problem with existing water quality. While many express concern about future water resource issues, they seem generally content with current conditions. Apart from a clear preference for an approach focused on enforcement of current water regulations, people do not have well-formed ideas about how best to protect our state's water resources.

Thus, there is a clear, ongoing need and opportunity to educate citizens on this topic, conduct outreach, and secure meaningful participation from a range of stakeholders in order to advance improved statewide water quality protections.

We also conducted educational outreach to a cross section of stakeholders involved in water quality. Those stakeholders were all highly knowledgeable participants in water quality policy discussions in the state. Much like the general public, stakeholders did not hold consensus views on the nature of the challenge for water quality or the potential solutions. Continued education and outreach to opinion leaders is essential for progress to be made.

METHODOLOGY

Strategies 360 performed statistically valid quantitative research using a sample of 600 people from across the state. This research was conducted in July 2012. The survey instrument was informed both by a comprehensive literature review and discussions with a number of subject matter experts around the state.

Strategies 360 also interviewed approximately two dozen water-quality stakeholders from a wide range of backgrounds, also distributed around the state. Those interviews lasted from half an hour to over an hour, and were performed in person, using a common template of questions.

PERCEPTIONS OF WATER QUALITY IN WASHINGTON

In general, citizens do not perceive environmental concerns to be a priority, and they do not believe water quality is a problem. Given the current economic conditions, the lack of urgency and focus on the environment generally or water quality specifically is not a surprise. Washingtonian's priorities match national trends where people are overwhelming concerned about their jobs and personal finances, the economy's performance in general, and education. Most Washingtonians continue to believe the state's water resources are in fine shape, and only a

small percentage see them as in poor condition. Three in four voters rated the health of Washington's water resources positively (either "excellent" or "good"), while only 2% of voters said water resources are "poor." This defines the challenge for moving forward – people need to be educated enough to know there is a problem with the health of Washington's water resources, and they need to care enough to engage in the solution, whatever that turns out to be. The most pressing concern people were able to identify was toxic contamination, confirming the strength of the decades-long educational effort around the nation's Clean Water Act, which was premised on the widespread pollution caused by toxic material from industrial sites. There is an enduring perception that industrial pollution – rather than other sources of contamination – remains the biggest threat to water quality. In reality, impacts to local water quality come from a wide variety of sources, and the most critical factors vary within watersheds.

WATER QUALITY PROTECTIONS

Citizens continue to value clean water, expressing strong support for water quality laws and even stronger support for effective enforcement of existing laws and regulations. Enforcement of existing laws was identified as the most desirable tool, suggesting that many people believe the Clean Water Act can work to reduce toxic pollution. There was support for additional new law, and some support for both the status quo and for reducing water quality protection.

There is no strong opposition to water quality. However, concerns arise when people consider the potential costs of water quality protection. Citizens continue to be wary of tax increases and increased cost of good they purchase, stemming from their general concerns about their own family finances and the economy in general.

Despite that concern, clean water is valued more than economic growth by the general population. Among stakeholders, perceptions vary considerably and directly based on how water quality protections impact their interests.

GOVERNANCE

There is no majority agreement on expanding government's role in protecting the state's water resources. While people trust government far more than the private sector to protect water quality, they do not hold a clear direction on what they want government to do in addition to its current efforts. Public health – such as ensuring fish and shellfish are safe to eat – remains a strong priority, as does protecting habitat. People view their local government as the best agent to protect water quality, perhaps because local public health agencies are best known to the general public and the general view of the federal government is not a strong, positive one.

Citizens do believe the private sector should do its part to protect water quality. In addition to their concerns about toxins, people support the concept that agricultural landowners should meet some minimum standards to protect water quality in exchange for receiving tax benefits.

FRAMING THE ISSUE

Messaging around public health and safety – especially for future generations – elicits the most positive responses. This aligns with concerns about food safety and concerns about toxins. People are not convinced that stronger water quality protections will reduce costs in any way and as noted above, remain cautious about paying for improvements.

FUTURE STEPS

Any attempt to improve water quality laws and enforcement in Washington will require an intensive period of public education to overcome key perceptual problems:

- Most people do not perceive a significant problem. The state's waters appear to the untrained eye to be mostly pristine and healthy.
- To the extent that people *do* perceive a problem, they assign responsibility to toxic pollution from industrial sources and not the wide variety of local factors that impact water quality.
- Issues related to fish __ except for whether fish and shellfish are safe to eat __ do not appear to move the public sufficiently to motivate change.

To achieve change, the problems with water quality in Washington need to be framed in ways that resonate with average citizens, they must be persuaded that:

- The scenic appearance of Puget Sound, rivers and lakes hides a growing and dangerous problem.
- That problem represents a threat to the health, safety and economic well-being of future generations of Washingtonians.
- The problem can be solved without exorbitant cost to the average citizens.

CONCLUSION

Any change to water quality policy requiring broad public support or approval would require a broad-based and intensive public education effort. Such an effort should be undertaken in a way that recognizes current perceptions and attitudes of the general public and opinion leaders, and is designed to gradually inform those groups about the need for enduring protection for Washington's water resources. This effort must include both media advertising aimed at the general public and information targeted and delivered to opinion leaders.

Chang, Lisa

From: Chang, Lisa
Sent: Wednesday, December 02, 2015 12:35 PM
To: Bonifacino, Gina
Subject: RE: Re-launch of the "What's Upstream?" campaign

Thanks Gina. I happened to speak with Larry this morning and he mentioned this, and I put in a Hot Topic on this to Angela and suggested she elevate this to Dennis today (although you will probably be able to mention this to him sooner than he will see the Hot Topic).

From: Bonifacino, Gina
Sent: Wednesday, December 02, 2015 12:01 PM
To: Chang, Lisa <Chang.Lisa@epa.gov>; Murchie, Peter <Murchie.Peter@epa.gov>; Rylko, Michael <Rylko.Michael@epa.gov>
Subject: FW: Re-launch of the "What's Upstream?" campaign

FYI.

Gina Bonifacino | Puget Sound Team
 US EPA Region 10
 Mail Stop OWW-193
 1200 Sixth Avenue
 Seattle, WA 98101
 206.553.2970

From: info@whatsupstream.com [<mailto:info@whatsupstream.com>]
Sent: Wednesday, December 02, 2015 11:50 AM
To: info@whatsupstream.com
Subject: Re-launch of the "What's Upstream?" campaign

Dear Friend,

You may recall that several years ago, the Center for Environmental Law and Policy, the Northwest Indian Fisheries Commission, the Swinomish Indian Tribal Community, the Western Environmental Law Center and a host of other environmental partners launched the "What's Upstream" campaign to bring greater public awareness to the effects of the agriculture industry's largely unregulated practices on the health of our waters.

We are pleased to announce that we have revamped our website and, starting today, are re-launching a very robust, six-month public information campaign - just in time for the start of the 2016 legislative session. Between now and next spring, we're confident that you'll see or hear our ads, which will span print, billboard, digital and radio media.

We invite you to have a look at the new website, and to share it broadly among your own networks. Please note that the website includes a tool where concerned residents can send a message to their legislators urging action on this critical but neglected issue.

To provide feedback on the website or to join your organization's name to the list of partners, please do not hesitate to contact us at info@whatsupstream.com.

Sincerely,

Center for Environmental Law and Policy
 Northwest Indian Fisheries Commission

Puget Soundkeeper Alliance
Spokane Riverkeepers
Swinomish Indian Tribal Community
Western Environmental Law Center

Chang, Lisa

From: Chang, Lisa
Sent: Monday, December 07, 2015 4:26 PM
To: Edmondson, Lucy
Cc: Murchie, Peter; Gockel, Catherine; Bonifacino, Gina; Bonifaci, Angela
Subject: Final draft talking points, What's Upstream

Hi Lucy,

Here are my final draft background/talking points on the Swinomish Tribe's "Whatsupstream.com." Please let me know if you need anything else.

Lisa

Briefing/Talking Points – Whatsupstream.com

Issue:

- A revised version of the Whatsupstream.com website went live on Thursday 12/3. Developed by the Swinomish Indian Tribal Community (SITC) under the NEP Tribal Lead Organization (LO) award, it spotlights nonpoint source agricultural pollution and is accompanied by social/media outreach driving traffic to the website.
- As anticipated, the website provides a link enabling readers to send letters to state legislators generally urging stronger regulation to protect water quality from agricultural NPS.
- R10/OWW had provided extensive input to SITC prior to website launch to ensure its factual accuracy and its alignment with the Action Agenda and Management Conference. Many, but not all, EPA comments were addressed.
- The final website will likely be controversial; an earlier version of the website which did not even include the letter to state legislators caused unease in the agricultural community in the Skagit Basin.

Background:

- In 2011 the Swinomish Tribe used NEP Tribal LO funding to launch a "public outreach" project to evaluate public perceptions of water quality in the Skagit Basin and conduct a public education effort to promote protective practices and regulation.
- As with the other LOs, NWIFC, which administers the Tribal LO, makes final decisions on subaward proposals and products, with EPA input.
- The project was clearly tied to the Skagit Chinook Recovery Plan (SCRCP) which like all Recovery Plans is a central component of the Puget Sound Action Agenda. For example, the SCRCP calls for "a vigorous public information effort, and by providing the technical information to assist landowners and others in their efforts to comply with existing regulations."
- The project has been approved and funded in 2011, 2012, 2013, 2014, and 2015 under the NWIFC. Under the Tribal LO, tribes must re-apply each year for funding and provide a workplan for the work they intend to do with each year of funding.
- Over the life of the project, as it has evolved, we have raised several key concerns.
 - First, we raised concerns with potential violations of anti-lobbying grant conditions. Based on discussions with ORC, we determined that the proposal did NOT violate anti-lobbying conditions.

Chang, Lisa

From: Chang, Lisa
Sent: Monday, December 14, 2015 12:31 PM
To: Murchie, Peter
Cc: Bonifaci, Angela; Bonifacino, Gina; Bill Zachmann; Michael Ryko
Subject: Summary of follow-up on Whatsupstream.com
Attachments: Final draft talking points, What's Upstream

Here are some notes on next steps from our meeting just now on the Whatsupstream.com launch:

- [At request of Dan O and Lucy Edmonson, Lisa provided briefing/messaging bullets – attached for reference – for Dennis in preparation for the 12/10 ECY-led round table meeting on water quality with WA Conservation Commission, WDFW, NRCS, PSP, WSDA, NOAA]
- POC for comments or questions about whatsupstream.com – direct any questions to Peter or Lisa. See suggested message bullets at end of attached briefing.
- POC for comments or questions about riparian buffer term and condition in NEP awards – direct any questions to Gina.
- Additional people who Peter should do individual touch-ins with:
 - NWIFC (Fran). Potential message – highlighting multiple major state initiatives to protect and improve water quality.
 - PSP (Sheida). Potential message – importance of bringing agriculture sector to the table in the Management Conference.
 - [Peter will also check in with Dan to see if there are others he should check in with]
- Check-in with ORC about lobbying. Peter will talk to ORC on his own about the website, in particular the click-through legislator letter feature. NOTE TO PETER: ORC had previously advised that the concern with this feature would be if the letter advocated for/against a specific piece of legislation, ballot measure, initiative, etc. The letter deliberately does NOT address any specific piece of legislation, measure, etc., and only calls generally for strengthened water quality protection in the state.



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

B-326944

December 14, 2015

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate

Subject: *Environmental Protection Agency—Application of Publicity or Propaganda and Anti-Lobbying Provisions*

Dear Mr. Chairman:

This responds to your request for our opinion concerning whether the Environmental Protection Agency's (EPA) use of certain social media platforms in association with its "Waters of the United States" (WOTUS) rulemaking in fiscal years (FY) 2014 and 2015 violated publicity or propaganda and anti-lobbying provisions contained in appropriations acts. Letter from Chairman, Committee on Environment and Public Works, United States Senate, to Comptroller General (June 16, 2015).

Section 718 of the Financial Services and General Government Appropriations Act, 2014, prohibited the use of EPA's appropriations for unauthorized publicity or propaganda purposes.¹ Section 715 of the act prohibited the use of EPA's appropriations for indirect or grassroots lobbying in support of or opposition to pending legislation.² These same restrictions applied to EPA's FY 2015 appropriations.³ Section 401 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2015, similarly prohibited the use of EPA's appropriations for grassroots lobbying.⁴

¹ Pub. L. No. 113-76, div. E, title VII, § 718, 128 Stat. 5, 234 (Jan. 17, 2014).

² *Id.*, § 715.

³ Pub. L. No. 113-235, div. E, title VII, §§ 715, 718, 128 Stat. 2130, 2382-83 (Dec. 16, 2014).

⁴ *Id.*, § 401.

In accordance with our regular practice, we contacted EPA to seek factual information and its legal views on this matter. Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, EPA (July 10, 2015); *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP. In response, EPA provided its legal analysis and electronic access to factual documentation. Email from Interim Secretary, EPA, to Managing Associate General Counsel, et al., GAO, *Subject: EPA Response to GAO regarding social media* (Aug. 7, 2015) (providing access to SharePoint site); EPA, Associate General Counsel Memorandum for General Counsel, *Analysis in response to an inquiry from the Government Accountability Office regarding EPA use of Social Media and the Clean Water Rule* (Aug. 6, 2015) (EPA Response).

As explained below, we conclude that EPA violated the described provisions through its use of social media in association with its rulemaking efforts to define “Waters of the United States” under the Clean Water Act (CWA) during FYs 2014 and 2015. Because EPA obligated and expended appropriated funds in violation of statutory prohibitions, we also conclude that EPA violated the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A), as the agency’s appropriations were not available for these prohibited purposes.

EPA did not quantify an exact cost associated with the use of any particular social media platform. The agency noted that staff is paid for time spent developing and posting a message but time is not tracked by platform or project. EPA Response, at 3. EPA explained to us that it spent \$64,610 on video and graphic assets to raise awareness surrounding the proposed rule, but it does not appear to us that the aspects of EPA’s campaign with which we have concerns would involve these video and graphic assets. *Id.* The agency should determine the cost associated with the prohibited conduct and include the amount in its report of its Antideficiency Act violation.

BACKGROUND

In March 2014, EPA and the Army Corps of Engineers released a proposed rule defining the scope of waters protected under the CWA to “provid[e] clarity” and to minimize the number of case-specific determinations made by regulators, which, according to the agencies, had increased following two Supreme Court decisions.⁵ 79 Fed. Reg. 22188 (Apr. 21, 2014).⁶ The public comment period was initially set to

⁵ *Rapanos v. United States*, 546 U.S. 932 (2006); *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers*, 531 U.S. 159 (2001).

⁶ See EPA, *News Releases – Water, EPA and Army Corps of Engineers Clarify Protection for Nation’s Streams and Wetlands* (Mar. 25, 2014), available at [\(continued...\)](#)

expire on July 21, 2014, but was ultimately extended until November 14, 2014.⁷ According to EPA, the agency used social media platforms in connection with the WOTUS rulemaking from February 2014 through July 2015. EPA Response, at 2. To understand how EPA used social media platforms, it is necessary to understand how the various platforms facilitate communications among their users. Social media platforms, like Facebook, Twitter, and Tumblr, enable users to create and share content, like messages and photos. This content becomes archived on each user's individual page or "timeline." When users log into a social media platform, they see a "newsfeed" or "dashboard," which is a real-time aggregate of the recent content of other users that they follow on the network. While we describe social media platforms at a basic level, we note that there are variations and distinct capabilities associated with different forums.

EPA explained to us that through social media, it sought to clarify the issues concerning the WOTUS proposed rule, to provide information about streams and wetlands, to demonstrate the rule's relevance, to provide opportunities for public engagement, and to correct what it viewed as misinformation concerning the rule. *Id.*, at 2. For ease of discussion in this opinion, we describe EPA's social media campaign using four categories: Thunderclap, the #DitchtheMyth Campaign, the #CleanWaterRules Campaign, and EPA's Links to External Websites.

1. EPA's Use of Thunderclap

Thunderclap is a "crowdspeaking platform" that allows a single message to be shared across multiple Facebook, Twitter, and Tumblr accounts at the same time. Thunderclap, *FAQ*, available at www.thunderclap.it/faq (last visited Dec. 7, 2015). The website allows what the site calls "campaign organizers" to create a Thunderclap page. The Thunderclap page is used to describe the organizer's social media campaign, including a message of no more than 117 characters to be shared by those who sign up to support the campaign. Thunderclap, *Getting Started*, available at www.thunderclap.it/guide (last visited Dec. 7, 2015). Each organizer selects what the site calls a "supporter goal" (for example, 500 supporters). If the campaign reaches the supporter goal, Thunderclap will automatically post the message on the social media accounts of the campaign's supporters on the same date and at the same time. The date and time are chosen by the campaign

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<http://yosemite.epa.gov/opa/admpress.nsf/3881d73f4d4aaa0b85257359003f5348/ae90dedd9595a02485257ca600557e30> (last visited Dec. 7, 2014).

⁷ 79 Fed. Reg. 22188; 79 Fed. Reg. 35712 (June 24, 2014) (extending public comment period to October 20, 2014); 79 Fed. Reg. 61590 (Oct. 14, 2014) (extending public comment period to November 14, 2014).

organizer. Thunderclap will post the message as drafted by the organizer, although an individual supporter has the option of customizing the message when signing up for a campaign.

During the public comment period for the WOTUS proposed rule, EPA created a Thunderclap campaign page titled, "I Choose Clean Water." The page was visibly attributed to EPA, as it displayed the agency's profile photo and, under the title, "by U.S. Environmental Protection Agency." The Story section of the page describing the campaign read as follows:

"Clean water is important – for drinking, swimming, and fishing. We need it for our communities, farms, and businesses. But right now 60 percent of the streams and millions of acres of wetlands across the country aren't clearly protected from pollution and destruction. In fact, one in three Americans—117 million of us—get our drinking water from streams that are vulnerable. To have clean water downstream in the rivers and lakes in our neighborhoods we need healthy headwaters upstream. EPA and the U.S. Army Corps of Engineers has [sic] proposed to strengthen protection for the clean water that is vital to all Americans."⁸

If EPA met its goal of 500 supporters, Thunderclap would post the following message to supporter accounts: "Clean water is important to me. I support EPA's efforts to protect it for my health, my family, and my community. <http://thndr.it/1sLh51M>." At the time of the campaign, the hyperlink⁹ connected to EPA's webpage on the proposed rule.¹⁰

⁸ EPA, *I Choose Clean Water*, Thunderclap, available at www.thunderclap.it/projects/16052-i-choose-clean-water (last visited Dec. 7, 2015) (EPA Thunderclap).

⁹ A hyperlink is text or a photo in a document or webpage that when clicked, connects to another webpage, section, or document.

¹⁰ This opinion focuses on the Thunderclap message created by EPA, despite the possibility that supporters could have altered or otherwise customized the message when joining the campaign. Further, depending on the forum authorized by the campaign supporter (Facebook, Tumblr, and/or Twitter), the posted message may have been accompanied by a photo of a child drinking water or other text. As we cannot be certain of every variation of the Thunderclap message that was posted, or how or why one message may have appeared differently than others, our discussion concerns EPA's message as included on its campaign page, "Clean water is important to me. I support EPA's efforts to protect it for my health, my family, and
(continued...)

EPA actively promoted its Thunderclap campaign by encouraging people to sign up and to spread the word so that others might sign up as well. See, e.g., Communications Director for Water, *Do You Choose Clean Water?*, The EPA Blog (Sept. 9, 2014), available at <http://blog.epa.gov/blog/2014/09/do-you-choose-clean-water/> (last visited Dec. 7, 2015). The EPA blog post announcing the campaign stated, after explaining that the greater protection proposed was necessary to ensure clean water, “We hope you’ll support our clean water proposal. To help you do that, and get your friends to also voice their support, we’re using a new tool called Thunderclap; it’s like a virtual flash-mob.” *Id.* Leading up to the post date for the Thunderclap message, EPA’s Twitter and Facebook accounts advertised the campaign with posts like, “Help us send a strong message about supporting clean water,” “Tell your friends that you choose clean water: let Thunderclap send a message,” and “Help us spread the word about the importance of clean water. We need 500 people to sign up to share the message.”

EPA met and exceeded its supporter goal, causing Thunderclap to post the agency’s message on 980 social media accounts on September 29, 2014, at 2 p.m. Based on the followers and friends of these supporters, Thunderclap estimates that EPA’s message potentially reached about 1.8 million people.

2. EPA’s #DitchtheMyth Campaign

In another social media effort, EPA attempted to dispel what it views as inaccuracies on the rule being circulated by external interest groups. For this purpose, EPA created a hashtag (#): #DitchtheMyth.¹¹ The #DitchtheMyth campaign included graphics regarding aspects of the rule, along with statements that people could tweet using their own Twitter accounts. The Ditch the Myth website showed as a “Myth,” for example, that “[g]roundwater is regulated by the Clean Water Act.” Below the “Myth,” EPA included what it called a “Truth”—in this example: “The proposed

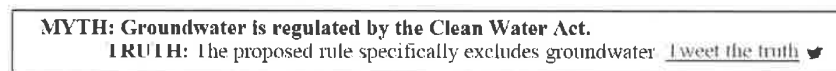
(...continued)

my community,” with the link to EPA’s webpage on its proposed rule. EPA Thunderclap.

¹¹ Including the hashtag symbol before a word, without spaces, allows users to click on the hashtagged phrase and see other posts that have used the same hashtag. Users can also perform searches for a hashtag to locate relevant posts. Hashtags that become very popular can become “Trending Topics,” which may highlight or elevate the hashtag’s visibility on users’ newsfeeds. Twitter, *Using hashtags on Twitter*, available at <http://support.twitter.com/articles/49309#> (last visited Dec. 7, 2015).

rule specifically excludes groundwater”—followed by a hyperlink of the phrase “Tweet the truth.”¹² See below:

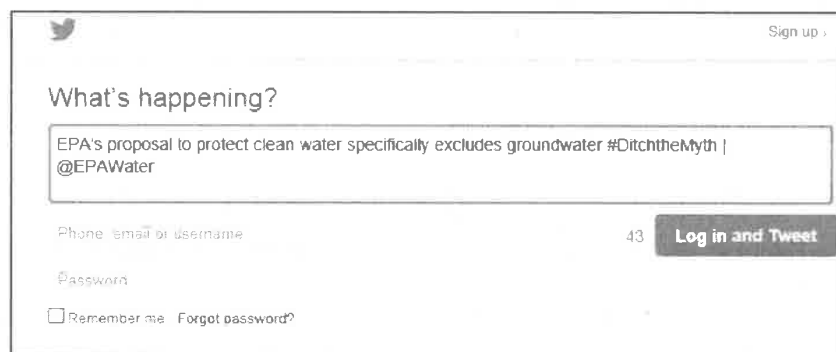
Figure 1: Image from EPA’s Ditch the Myth Webpage



Source: EPA. | GAO B-326944

Clicking the hyperlinked phrase “Tweet the truth” generated a Twitter window with the “Truth” statement followed by “#DitchtheMyth | @EPAWater[:.]”

Figure 2: Screenshot of GAO-Generated Tweet



Source: Twitter. | GAO B-326944

Twitter users could share the statement as displayed or alter the message. Each of the graphics (a feature separate from the tweets) included EPA’s Ditch the Myth website as well as the agency’s logo, and EPA describes the inclusion of its Twitter handle, @EPAWater, at the end of the prewritten tweets, as a byline.

3. EPA’s #CleanWaterRules Campaign

On April 7, 2015, EPA’s Communications Director for its Office of Water created an EPA blog post called “Tell Us Why #CleanWaterRules.”¹³ The post initiated the

¹² EPA’s Ditch the Myth website no longer exists. We accessed the #DitchtheMyth content through documents provided to us by EPA.

¹³ Leland E. Beck, *Monday Morning Regulatory Review – 4/13/15*, Federal Regulations Advisor (Apr. 12, 2015), available at

(continued...)

agency's #CleanWaterRules social media campaign. The Communications Director states that "[w]e can't protect our rivers, lakes, and coastal waters if we don't protect our streams and wetlands," and notes that the best thing people can do for clean water is to "spread the word about how much it matters." He suggested that people do this by posting a photo holding a #CleanWaterRules sign to Facebook, Twitter, or Instagram, with the #CleanWaterRules hashtag and a reason why clean water rules. EPA's social media accounts used this hashtag in numerous messages describing the importance of clean water and the protections in the rule.

4. EPA's Links to External Websites

The EPA blog post described above also included hyperlinks to a Natural Resources Defense Council (NRDC) webpage and to a Surfrider Foundation blog post.¹⁴ In the EPA blog post, EPA's Communications Director for Water describes why "clean water rules," two reasons being because he is a surfer and because he is a beer drinker.

He notes that as a surfer, he "[doesn't] want to get sick from pollution." The phrase "sick from pollution" hyperlinks to a Surfrider Foundation blog post, "Five reasons why surfers are more likely to get sick from polluted ocean water than beach

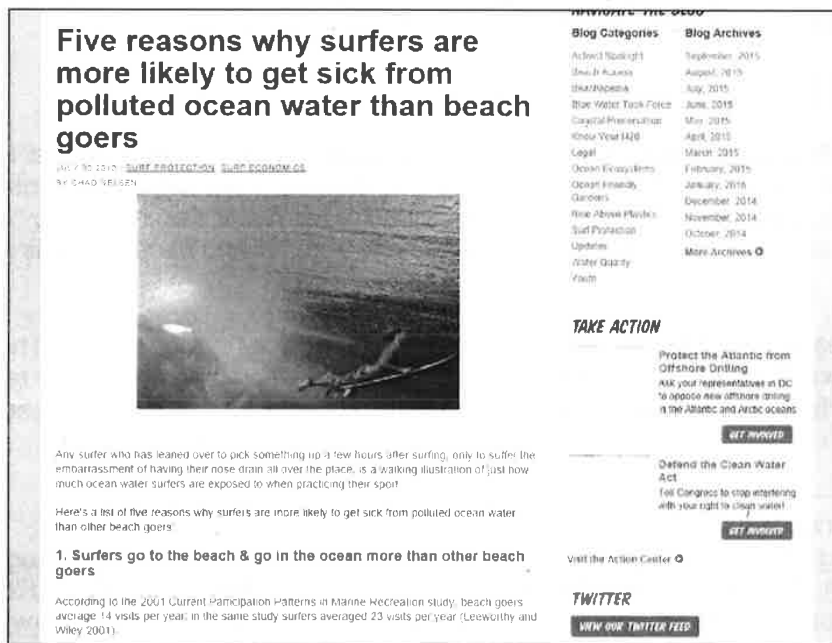
(...continued)

www.fedregsadviser.com/2015/04/12/ (last visited Dec. 7, 2015) (Fed. Reg. Adviser); Communications Director for Water, *Tell Us Why #CleanWaterRules*, EPA Blog (Apr. 7, 2015), available at <http://blog.epa.gov/blog/2015/04/tell-us-why-cleanwaterrules/> (last visited Dec. 7, 2015) (EPA Blog Post).

¹⁴ NRDC describes itself an environmental action group operating under section 501(c)(3) of the tax code. NRDC, *About NRDC: NRDC Action Fund*, available at www.nrdc.org/about/actionfund.asp (last visited Dec. 7, 2015) (NRDC Action Fund). The organization asserts that it "mobilize[s] the public in direct action campaigns that have produced millions of petitions to . . . government agencies." NRDC, *About NRDC: Finances*, available at www.nrdc.org/about/finances.asp (last visited Dec. 7, 2015). The NRDC website also states that "[t]he NRDC Action Fund works to support pro-environment legislation and defeat anti-environment legislation through paid advertising and phonebanking and by mobilizing grassroots pressure." NRDC Action Fund. The Surfrider Foundation also operates under section 501(c)(3) of the tax code. It describes itself as a grassroots environmental organization whose mission is to "protect[] oceans, waves and beaches through a powerful activist network." Surfrider Foundation, *Surfrider Foundation FAQ*, available at www.surfrider.org/images/uploads/publications/FAQ_2015.pdf (last visited Dec. 7, 2015).

goers.”¹⁵ In a column adjacent to the Surfrider blog post is a “Take Action” section containing a link button (“Get Involved”) with the description, “Defend the Clean Water Act. Tell Congress to stop interfering with your right to clean water!” We include below the Surfrider Foundation blog post hyperlinked in the EPA blog.¹⁶

Figure 3: Screenshot of Surfrider Foundation Blog Post



Source: Surfrider Foundation | GAO B-326944

The “Get Involved” button leads to an action page. When we visited the page on June 5, 2015, the action page stated:

“Federal lawmakers in DC are trying to prevent the Environmental Protection Agency from restoring Clean Water Act (CWA) protection for nearly 20 million acres of wetlands, two million miles of streams,

¹⁵ Chad Nelsen, Surfrider Foundation, *Five reasons why surfers are more likely to get sick from polluted ocean water than beach goers* (July 30, 2010), available at www.surfrider.org/coastal-blog/entry/five-reasons-why-surfers-are-more-likely-to-get-sick-from-polluted-ocean-water (last visited Dec. 7, 2015) (Surfrider Blog Post).

¹⁶ This screenshot was taken on September 15, 2015. We note that the Surfrider Foundation has since redesigned its website. The “Take Action” column, along with the other information in side bar, no longer appears alongside the blog posts.

and the drinking water for 117 million Americans. Members of both the U.S. Senate and the House of Representatives have proposed attaching 'dirty water' riders to spending bills to block the EPA's efforts.

"These small streams and wetlands need our protection as they impact the quality and health of downstream waters, and ultimately our coasts and the ocean. Clean water at the beach starts with healthy waters upstream.

"Tell Congress to stand strong for clean water and oppose any amendments that undermine the Clean Water Act in appropriations legislation."

We visited the Surfrider blog post again on September 15, 2015. The text of the action page linked through the "Get Involved" button had changed to state the following, along with an associated form letter for submission:

"Congress is considering legislation to prevent the Environmental Protection Agency from implementing the recent Clean Water Rule, despite the fact that 80% of Americans support this science-based decision.

"The Clean Water Rule is necessary to protect nearly 20 million acres of wetlands and two million miles of streams that provide drinking water for 117 million Americans and support healthy water downstream at the beach.

"Tell Congress to listen to the American public instead of industry polluters and oppose any legislation or spending bills that would undermine the Clean Water Rule."

In June and July 2014, provisions that would prohibit the use of appropriated funds in connection with the proposed rule were introduced in the Army Corps of Engineers' and EPA's FY 2015 appropriations bills, but were not ultimately enacted. H.R. 4923, 113th Cong., § 106 (2014); H.R. 5171, 113th Cong., § 429 (2014). In June 2015, a similar provision was proposed for inclusion in EPA's FY 2016 appropriations bill. See H.R. 2822, 114th Cong., § 422 (2015).

Regarding beer, the EPA blogger explains that "brewers depend on a reliable supply of clean water," and that "there is an alliance of brewers speaking out for clean water." The phrase "alliance of brewers" hyperlinks to an NRDC page, "Brewers for Clean Water." NRDC, *Brewers for Clean Water*, available at www.nrdc.org/water/brewers-for-clean-water/ (last visited Dec. 7, 2015) (Brewers Alliance Page). In a box embedded alongside the text of the Brewers for Clean Water page, describing NRDC's partnership with breweries to defend the CWA, is

an orange link button (“Add Your Voice and Help Make Great Beer”) leading to an action page. We include below the NRDC webpage hyperlinked in the EPA blog.¹⁷

Figure 4: Screenshot of NRDC Webpage



Source: NRDC | GAO B-326944

The action page states the following:

“We shouldn’t have to worry if the water sources we rely on for drinking, fishing, and swimming are polluted. But a legal loophole has undermined the Clean Water Act safeguards that are supposed to prevent big polluters from dumping dangerous pollutants into our waters.

“The Environmental Protection Agency and the Army Corps of Engineers are ready to make important changes to close this loophole, but polluters and their allies in Congress could try to block them from moving forward. You can step up to help stop the polluter attack on these needed clean water safeguards.

¹⁷ This screenshot was taken on September 15, 2015.

“Protect clean water. Urge your senators to defend Clean Water Act safeguards for critical streams and wetlands.”

Below the text is a form for readers to send to their senators, urging support for the “Clean Water Protection Rule.”

At the time of EPA’s April 7, 2015 blog post, the Waters of the United States Regulatory Overreach Protection Act of 2015 was pending in the House. H.R. 594, 114th Cong. (2015). If enacted, the provision would prevent implementation of the WOTUS proposed rule. The Regulatory Integrity Protection Act of 2015, which would require withdrawal of the rule, was introduced in the House on April 13, 2015. H.R. 1732, 114th Cong. (2015). Several other proposed measures that would similarly impact the rule were pending at or near the time of EPA’s blog post.

As of December 2015, the EPA blog post continues to hyperlink to the Surfrider Foundation blog post and the NRDC Brewers for Clean Water webpage.

DISCUSSION

At issue here is whether EPA violated publicity or propaganda and anti-lobbying provisions concerning the use of its FY 2014 and FY 2015 appropriations. In this opinion, we first address the publicity or propaganda prohibition, including its application to EPA’s Thunderclap, #DitchtheMyth, and #CleanWaterRules social media campaigns. Then we address the grassroots lobbying prohibition, as applied to the hyperlinks in EPA’s “Tell us why #CleanWaterRules” blog post, which connected to NRDC and Surfrider Foundation webpages containing appeals to readers to contact Congress.

As discussed below, we conclude that EPA’s use of Thunderclap constituted covert propaganda, in violation of the publicity or propaganda prohibition. The agency’s #DitchtheMyth and #CleanWaterRules social media campaigns, however, did not implicate the publicity or propaganda prohibition. We also conclude that EPA hyperlinks to the NRDC and Surfrider Foundation webpages provided in the EPA blog post constitute grassroots lobbying, in violation of the grassroots lobbying prohibition.

A. Publicity or Propaganda

Section 718 of the Financial Services and General Government Appropriations Act, 2014, provides: “No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by Congress.” Pub. L. No. 113-76, div. E, § 718. This same provision appears in section 718 of the Financial Services and General Government Appropriations Act, 2015. Pub. L. No. 113-235, div. E, § 718.

EPA's activities raise issues concerning two forms of restricted communications: covert propaganda and self-aggrandizement. Covert propaganda refers to communications that fail to disclose the agency's role as the source of information. B-320482, Oct. 19, 2010. Communications tending to emphasize the importance of the agency, its officials, or the activity in question constitute self-aggrandizement. *Id.* See also 31 Comp. Gen. 311 (1952). As explained below, we conclude that EPA's use of Thunderclap constitutes covert propaganda, in violation of the publicity or propaganda prohibition. The #DitchtheMyth social media campaign, however, did not amount to covert propaganda. We also conclude that the #CleanWaterRules social media campaign was not self-aggrandizement.

1. EPA's Use of Thunderclap and the #DitchtheMyth Campaign

Here, because EPA created a Thunderclap message that did not identify EPA as the author to those who would read it when Thunderclap shared the message across social media accounts, we consider whether EPA's use of Thunderclap constituted covert propaganda. The critical element of covert propaganda is the agency's concealment from the target audience of its role in creating the material. B-305368, Sept. 30, 2005 ("A critical element of this violation is the concealment of, or failure to disclose, the agency's role in sponsoring the material"); B-302710, May 19, 2004 ("[F]indings of propaganda are predicated upon the fact that the target audience could not ascertain the information source").

It is not enough that an agency disclose its role to the conduit of such material if it has not taken measures to identify its role to the intended recipient. For example, when the Centers for Medicare and Medicaid Services (CMS) provided prepackaged news videos to news stations to be reproduced without alteration, and did not, within the story or script, identify the agency as the source, we determined that CMS engaged in covert propaganda. B-302710. The labeling of the materials which identified CMS as the source to the news organizations did not identify CMS's role to the viewers. *Id.* Rather, the agency designed the videos to appear to the television viewing audience as though developed by the news stations. *Id.* Similarly, we concluded that suggested editorials prepared by the Small Business Administration (SBA) and distributed to newspapers constituted covert propaganda. B-223098, Oct. 10, 1986. The newspapers printing the editorials would know of SBA's role; however, as the text of the pieces did not identify SBA as the source, the readers would not. *Id.*

A Thunderclap campaign, by its nature, requires supporters for Thunderclap to post the campaign's message. Accordingly, reaching and acquiring these supporters is an inherent objective. For these supporters, EPA's role in the campaign and construction of the message to be shared was evident: EPA advertised the campaign, and the webpage on which supporters joined the campaign was visibly attributed to the agency. Like CMS's prepackaged news videos and its relationship

with television stations, these supporters, while certainly one target audience of the campaign, were not the target audience of the Thunderclap message itself; they were conduits of EPA's message. The message¹⁸ was not written for the supporters who joined the campaign—it was written for their networks of friends and followers who would see the message in their newsfeeds and dashboards when Thunderclap posted on their accounts. This notion is supported by EPA's many social media messages encouraging people to "tell [their] friends," "spread the word" and "help [EPA] send a strong message."

Similar to CMS's prepackaged news videos and SBA's suggested editorials, EPA designed its Thunderclap message so that it could be shared without alteration. While EPA's role was transparent to supporters who joined the campaign, this does not constitute disclosure to the 1.8 million people potentially reached by the Thunderclap. To those people, it appeared that their friend independently shared a message of his or her support for EPA and clean water.

We recognize that by allowing Thunderclap to post EPA's message to their social media accounts, supporters may have adopted the message. But the purpose of the publicity or propaganda prohibition is to ensure that the government identifies itself as the source of its communications. A supporter's adoption or acceptance of EPA's message does not alter the fact that EPA used supporters as conduits of an EPA message campaign intended to reach a much broader audience than just these conduits, and EPA failed to disclose to that broader audience that the message was prepared and disseminated by EPA. EPA constructed a message to be shared by others that refers to EPA in the third person and advocates support of the agency's efforts. In stating "clean water is important to *me*" and "*I* support EPA's efforts," EPA deliberately disassociates itself as the writer, when the message was in fact written, and its posting solicited, by EPA. Compare B-305368 (concluding that contract for positive commentary on the No Child Left Behind Act constituted covert propaganda, despite the commentator's personal belief in the Act), with B-320482 (deciding that contractor's opinion pieces and public statements on healthcare policy did not violate the prohibition, because the agency was not involved in procuring his opinion, nor were the actions taken as part of his contract).

EPA argues that it made no attempt to conceal or otherwise mislead recipients as to its role in creating the information conveyed on social media. EPA Response, at 8. Concerning Thunderclap specifically, the agency notes the campaign was clearly identified as an EPA social media effort. *Id.*, at 10. The agency stipulates that the message retained EPA's identifying information, included reference to EPA, and also linked to the website for the proposed rule, which made it easy for subsequent recipients of the message to discern EPA's involvement. *Id.*

¹⁸ "Clean water is important to me. I support EPA's efforts to protect it for my health, my family, and my community," with a link to EPA's website on the proposed rule.

As we previously noted, EPA made its role evident to those in its social media networks who viewed its posts regarding the campaign and to those who joined the campaign allowing Thunderclap to post on their accounts. But EPA did not identify its role to its ultimate audience. The reference to EPA within the Thunderclap message ("I support EPA's efforts") and the link to the website for the proposed rule did not identify EPA as the creator of the message, or even the Thunderclap campaign, to the 1.8 million viewers. A Thunderclap post is not the equivalent of "retweeting" or sharing another's Facebook post, in which cases the new message would reflect its previous or original author. Generally, retweets and shared Facebook posts make clear from whom the post was derived. Thunderclap posts do not retain identifying information in the same manner as these other forms of sharing. From the post, one could possibly discern that the message was associated with Thunderclap, but even that possibility does not constitute a visible indication to readers that EPA was the source of the statement.

As it relates to the potential 1.8 million viewers of the agency's Thunderclap campaign, EPA argues its message could not be considered covert, because EPA did not contract with the Thunderclap recipients nor conceal its role. As support, the agency cites to our decision concluding that the Department of Defense's (DOD) outreach to Retired Military Officers (RMO) serving as media-analysts did not violate the prohibition. See B-316443, July 21, 2009. EPA's Thunderclap, however, is distinguishable from DOD's outreach to RMOs. DOD sought to influence public opinion of its war policies by providing the RMOs with talking points and information and by organizing meetings and travel. As the opinion emphasized, the agency did not engage RMOs to have them deliver a DOD message to the public. *Id.* Here, however, EPA identified a particular message that it wanted to convey and sought supporters to authorize Thunderclap to deliver that message using their social media accounts. In this way, EPA's use of appropriations is legally indistinguishable from our decisions in which agencies constructed a message intended for a third party to distribute. See, e.g., B-302710; B-223098.

EPA also notes that use of its messages beyond the agency's initial action is outside the scope of the publicity or propaganda prohibition as such use did not involve appropriated funds. EPA Response, at 9–10 (citing B-304829, June 6, 2005). To the contrary, the publicity or propaganda prohibition is concerned with the perception of the 1.8 million viewers. As with our CMS decision where the concern was that a prepackaged news video could be included in a news segment and the viewing audience would not be able to discern the source, here we focus on the message constructed by EPA with appropriated funds, and whether that message identified EPA's role to its target audience. It did not. Similar to the suggested editorials submitted by SBA for newspapers to print for the target audience, the Thunderclap was specifically designed for transmission through an intermediary making that transmission precisely the communication at issue. See B-223098. See also

B-302710. Thus, we find EPA's use of Thunderclap violated the publicity or propaganda prohibition.

For purposes of the publicity or propaganda prohibition, we distinguish EPA's #DitchtheMyth campaign from Thunderclap. Despite the fact that the #DitchtheMyth campaign, like Thunderclap, was designed to permit people to post EPA's message from their own accounts, the facts are different. The graphics used in the #DitchtheMyth campaign contained the EPA logo, and the prewritten tweets contained the "#DitchtheMyth | @EPAWater" ascription at the end. We agree with EPA that including the @EPAWater Twitter handle at the end of the tweets identified EPA to the intended audience as the source of the information. Consequently, we conclude that EPA did not violate the prohibition in using appropriations to fund its #DitchtheMyth campaign.

2. EPA's #CleanWaterRules Campaign

The #CleanWaterRules campaign was designed to spread positive commentary on clean water and the WOTUS rule. EPA used the hashtag itself in numerous social media messages providing information and emphasizing the importance of the agency's new rule. EPA's #CleanWaterRules campaign raises a question about self-aggrandizement because certain posts described what EPA declared as benefits or positive changes that would come about, and attributed such benefits to the agency's new rule. Examples of such posts include:

- "Our new rule protects clean water and in turn protects everything that depends on it – including your neighborhood grocery store. #CleanWaterRules"
- "Our communities and our economy depend on clean water. That's why we're finalizing our Clean Water Rule. #CleanWaterRules"
- "Millions of acres of America's wetlands lacked clear protections – until our new #CleanWaterRules"
- "Some big news this morning: Our Clean Water Rule was just finalized. This rule will better protect upstream waters, ensuring cleaner water downstream. That's great news for people's health, the environment and our economy. . . . #CleanWaterRules"

Self-aggrandizement is defined as publicity of a nature tending to emphasize the importance of the agency or activity in question, noting that one of the prohibition's primary targets is communication with an obvious purpose of puffery. B-302504, Mar. 10, 2004. Balancing the restriction with an agency's right to disseminate information regarding its views and policies, we have traditionally afforded agencies wide discretion in their informational activities. *Id.*

We do not view EPA's use of the #CleanWaterRules hashtag as self-aggrandizing. The campaign and associated social media posts certainly emphasized the

significance of the agency's rule and the perceived benefits that would result from its implementation, but engendering praise for the agency was not the goal. We note that this situation concerns an agency's rulemaking and not an agency's backing of particular legislation—when EPA refers to “our rule,” the attribution is a factual statement rather than evidence of an attempt to laud or credit EPA for the stated benefits. See B-302504 (HHS cover letter touting the benefits of a new Medicare law with statements including “[a]s a result of a new law, Medicare is making some of the most significant improvements to the program since its inception” and an accompanying letter advising beneficiaries that “[t]his new law preserves and strengthens the current Medicare program” did not constitute self-aggrandizement, as HHS did not attribute the enactment of new benefits to HHS). See also B-319075, Apr. 23, 2010 (HHS's creation of the *HealthReform.gov* website and the *State Your Support* webpage dedicated to advocating the Administration's position on health-care reform during the pendency of the Patient Protection and Affordable Care Act did not constitute self-aggrandizement, as they were not designed to persuade the public of HHS's importance).

3. EPA's Informational Authorities

EPA points to authority in the National Environmental Education Act of 1990 (NEEA), 20 U.S.C. §§ 5501–5510, and section 206 of the E-Government Act of 2002, Public Law 107-347, as providing statutory authority to use the internet and other information technologies to educate the public and achieve the “widest possible dissemination of information,” and to create opportunities for public participation in Government. EPA Response, at 5–6 (internal quotation marks omitted).

The NEEA established an Office of Education within EPA, charged with disseminating educational and media material, and developing and supporting efforts to improve understanding of the natural environment, among other duties. 20 U.S.C. § 5501(a), (b). Section 206 of the E-Government Act contemplates enhanced public participation enabled by agency maintenance of a federal government website containing information consistent with the requirements of the Administrative Procedures Act and electronic docketing for its rulemakings. Pub. L. No. 107-347, § 206, 116 Stat. 2899, 2916 (Dec. 17, 2002). Clearly, these statutes evidence Congress' interest in EPA informing the public regarding its policies and views. These statutes, necessarily, should be construed in harmony with the publicity or propaganda prohibition, which Congress has imposed on EPA's use of its appropriation. In this regard, neither of these provisions provides EPA with specific authority to overcome the publicity or propaganda restriction on the use of appropriated funds. See B-302504.

B. Grassroots Lobbying

Section 715 of the Financial Services and General Government Appropriations Act, 2015, provides:

“No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.”

Pub. L. No. 113-235, div. E, § 715.¹⁹ The anti-lobbying provision prohibits indirect or “grassroots” lobbying in support of, or in opposition to, pending legislation. B-325248, Sept. 9, 2014. The provision is violated where there is evidence of a clear appeal by an agency to the public to contact Members of Congress in support of, or in opposition to, pending legislation. *Id.*; B-322882, Nov. 8, 2012. It is not required that the appeal specify a particular piece of legislation. B-192746-O.M., Mar. 7, 1979. Our interpretation of section 715 is derived from the statutory language as well as the legislative history of grassroots lobbying prohibitions and is consistent with a proper respect for an agency’s right to communicate with the public and Congress about its policies and activities. B-325248. *See also* B-304715, Apr. 27, 2005; B-270875, July 5, 1996; B-192658, Sept. 1, 1978. To violate the grassroots lobbying prohibition, there must be pending legislation and a clear appeal by an agency to the public to contact Members of Congress.

At issue here is whether EPA’s hyperlinks to external webpages containing link buttons to contact Members of Congress in support of the proposed rule constitute a clear appeal by EPA to the public to contact Members of Congress in support of or in opposition to pending legislation. Both of the external webpages contained link buttons to contact Congress in support of the proposed rule while several bills were pending that would prevent implementation of the rule. In this context, we view the appeals as urging contact in opposition to pending legislation. EPA associated itself with the linked content when it chose to hyperlink to those webpages within its official blog post. As explained below, we conclude that by hyperlinking to these

¹⁹ Additionally, section 401 of the Department of Interior, Environment, and Related Agencies Appropriations Act, 2015, states that “[n]o part of any appropriation contained in the Act shall be available for any activity that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete other than to communicate to Members of Congress as described in 18 U.S.C. [§] 1913.” Pub. L. No. 113-235, div. F, § 401.

webpages, EPA appealed to the public to contact Congress in opposition to pending legislation in violation of the grassroots lobbying prohibition.

1. The External Webpages Contained Clear Appeals to the Public to Contact Members of Congress in Opposition to Pending Legislation

In the “Tell Us Why #CleanWaterRules” blog post, EPA’s Communications Director for its Office of Water explained how water affects two groups: surfers and beer brewers. EPA’s Communications Director explained that surfers are at risk for becoming sick from pollution, and that brewers rely on clean water. The EPA blogger included hyperlinks to the Surfrider Foundation blog post and the NRDC webpage supporting his statements.

a. Pending Legislation

Although specific legislation is not mentioned in either the EPA blog post or the hyperlinked webpages, since the March 2014 release of the proposed WOTUS rule for comment and continuing to the present, multiple bills have been introduced to prevent implementation of the rule. Such measures include:

- Protecting Water and Property Rights Act of 2014, S. 2496, 113th Cong. (2014) (introduced June 19, 2014)
- Waters of the United States Regulatory Overreach Protection Act of 2014, H.R. 5078, 113th Cong. (2014) (introduced July 11, 2014)
- Waters of the United States Regulatory Overreach Protection Act of 2015, H.R. 594, 114th Cong. (2015) (introduced January 28, 2015)
- American Energy Renaissance Act of 2015, S. 791, 114th Cong. (2015) (introduced March 18, 2015)
- American Energy Renaissance Act of 2015, H.R. 1487, 114th Cong. (2015) (introduced March 19, 2015)
- Regulatory Integrity Protection Act of 2015, H.R. 1732, 114th Cong. (2015) (introduced April 13, 2015)
- Defense of Environment and Property Act of 2015, S. 980, 114th Cong. (2015) (introduced April 16, 2015)
- Federal Water Quality Protection Act, S. 1140, 114th Cong. (2015) (introduced April 30, 2015)
- Defending Rivers for Overreaching Policies Act of 2015, S. 1178, 114th Cong. (2015) (introduced April 30, 2015)
- Don’t Ignore the Will of the American People Act, H.R. 2599, 114th Cong. (2015) (introduced June 1, 2015)
- Federal Regulatory Certainty for Water Act, H.R. 2705, 114th Cong. (2015) (introduced June 9, 2015)
- Department of Interior, Environment, and Related Agencies Appropriations Act, 2016, H.R. 2822, § 429, 114th Cong. (2015) (introduced June 18, 2015)

Of interest to us is legislation pending from April 7, 2015, the date of EPA's blog post, to the present. For example, the Waters of the United States Regulatory Overreach Protection Act of 2015, H.R. 594, was introduced in the House on January 28, 2015. If enacted, the provision would prevent implementation of the proposed rule. The Regulatory Integrity Protection Act of 2015, H.R. 1732, was one of several measures introduced in April 2015 that would require withdrawal of the proposed rule. On June 18, 2015, section 422, was proposed for inclusion in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2016.²⁰ The provision would prohibit the use of EPA's appropriation in connection with the WOTUS rule.

A Member of Congress contacted through the NRDC and Surfrider Foundation action forms could fairly perceive the contact as encouragement to vote against pending legislation that would prevent implementation of the rule—which, during the time of the EPA blog post, would include these and other measures. During a Maritime Administration advertising campaign encouraging the public to contact Congress in support of a strong merchant marine, legislation was pending that would directly impact the strength of the merchant marine. B-192746-O.M. We concluded that one could reasonably infer that the ad campaign was directed toward supporting the legislation. *Id.* A congressman receiving mail from constituents supporting a strong merchant marine could reasonably consider such comments as favoring the pending legislation. *Id.* Cf. B-322882, Nov. 8, 2012 (U.S. Consumer Product Safety Commission email encouraging individual to contact Congress regarding an interpretive rule did not violate prohibition as the appeal did not mention pending legislation, *and* there was no relevant legislation concerning the rule pending at the time).

b. Clear Appeal

In addition to providing support for EPA's assertion that brewers rely on clean water, the NRDC Brewers for Clean Water page espoused a strong message of support for Clean Water Act safeguards, along with a clear suggestion that the public get involved to encourage strong legal protections. As seen in Figure 4, the orange link button leading to the action page ("Add your voice and help make great beer") is prominently displayed, as is the lead-in solicitation, which states in part:

"Our water supplies depend on responsible regulations that fight pollution and protect drinking water at its source by keeping small streams and wetlands healthy.

"Water Needs Us

²⁰ H.R. 2822, § 422, 114th Cong. (2015).

"Now our streams, wetlands, and water supply need our help. Without strong legal protections, they are under threat from pollution like sewage, agricultural waste and oil spills.

"You can help defend clean water and great beer by taking action today."

The action element is thus visually and substantively incorporated in the NRDC Brewers for Clean Water page that is directly hyperlinked in the EPA blog, and clicking the link button leads to the webpage allowing readers to transmit a message to their senators. Specifically, after noting that "polluters and their allies in Congress could try to block" the rule from moving forward, the prompt explicitly urges readers to contact their senators to ask them to support agency efforts to finalize the proposed rule. See Brewers Alliance Page (click link button). The NRDC page makes a clear appeal to the public to contact Members of Congress.

Similarly, the Surfrider Foundation webpage contains a clear appeal to the public to contact Members of Congress. As seen in Figure 3, the prompt associated with the "Get Involved" link button stated on its face, "Defend the Clean Water Act, Tell Congress to stop interfering with your right to clean water!" Clicking the button led to an action page including a form to contact Congress to encourage opposition of legislation or amendments in appropriations bills that would undermine the CWA or WOTUS rule.

We distinguish our conclusion here from our opinion concluding that HHS did not engage in grassroots lobbying when it created a *State Your Support* webpage, allowing users to electronically sign a form letter to the President supporting the Administration's position on health care reform while the Patient Protection and Affordable Care Act was pending. B-319075. Messages to the President do not implicate the grassroots lobbying prohibition. The letter included an affirmation of "commitment to work with Congress to enact legislation this year which provides affordable, high quality coverage for all Americans." *Id.* However, the letter actually contained no direct appeal to contact Congress, and we did not find a violation. B-319075. See also B-304715, Apr. 27, 2005.

Unlike the *State Your Support* webpage, both the NRDC and Surfrider Foundation webpages made clear appeals to the public to contact Congress in support of the proposed rule. Specifically, the webpages contained clear appeals to the public to contact Members of Congress in support of EPA's efforts to finalize the WOTUS rule and in opposition to measures that would undermine the rule, while several bills that would explicitly prevent implementation of the rule were pending. The appeals urge the public to contact Congress in opposition to pending legislation. See B-192746. We next analyze whether EPA's association with the webpages through its hyperlinks constitutes grassroots lobbying.

2. EPA Associated with the Appeals by Hyperlinking to the Webpages

Hyperlinks facilitate the transmission of information and ideas across the internet. The ease and innovation of the internet, however, do not obviate established restrictions on the use of appropriations. By its nature, including a hyperlink invites readers to visit the website to which the hyperlink connects. In fact, EPA conceded that it intended to direct readers to the linked articles, which supported statements made in its blog post. EPA Response, at 15. We cannot view the articles in a vacuum. We must assess their visible content and overall message as part of the message conveyed by EPA in connecting to the linked webpages. While EPA's literal message (as stated in the sentences containing the hyperlinks) concerned the impact of clean water on surfers and brewers, and the hyperlinked webpages both contained information affirming EPA's statements, the context here is important.

EPA published its "Tell Us Why #CleanWaterRules" blog post on April 7, 2015, after submitting the final rule to OMB on the previous day.²¹ Fed. Reg. Advisor. At a critical time in the rulemaking process, the blog post announced EPA's #CleanWaterRules campaign. By asking the public to post photos proclaiming reasons that clean water rules using a hashtag, EPA created an opportunity to elevate support for its rule. EPA Blog Post. With knowledge of significant, continued congressional opposition to the rule²² (including measures pending at or near the time of the blog post's publication), the agency used this forum to link to a campaign page belonging to NRDC, an environmental action group, describing an alliance of brewers and their advocacy for strong legal protections for streams and wetlands under the Clean Water Act. This webpage connected to a form letter specifically seeking congressional support for the finalization of EPA's clean water rule. EPA also used its blog post to link to an article in a blog belonging to a grassroots environmental organization that utilizes a "powerful activist network" to protect oceans, waves and beaches (Surfrider Foundation)—a blog which displayed a visible "Take Action" column for lobbying alongside the article.

²¹ Pursuant to an Executive Order, OMB, through its Office of Information and Regulatory Affairs (OIRA), provides oversight of agency regulatory actions. For significant regulatory actions, OIRA may return a final rule to the agency for additional consideration or delay the publication or issuance of the rule to the public. Exec. Order No. 12866, *Regulatory Planning and Review*, 58 Fed. Reg. 190 (Oct. 4, 1993).

²² Following introduction of the proposed rule, 231 members of the House submitted a letter requesting that EPA withdraw the proposal, citing "serious concerns." Members sent another letter of concern to EPA regarding the WOTUS rule in October 2014.

Our consideration in applying the grassroots lobbying restriction is not confined to the message conveyed on the date EPA published its blog post. We recognize that websites are dynamic. While the content of some remains static, the content of others may change frequently. And a webpage, as it exists in one moment, may be viewed and may convey a message beyond that moment—a message that, as conditions change, may evolve from what was previously communicated. EPA published its blog post on April 7, 2015, but a reader could visit the blog and link to the NRDC and Surfrider Foundation webpages beyond that date, if EPA continued to facilitate access. A clear appeal to contact Congress regarding pending legislation, whether it occurred on April 7, 2015, or in the months that followed, implicates the grassroots lobbying prohibition. For example, several bills were introduced after EPA published its blog post. As previously noted, a senator contacted through the NRDC or Surfrider Foundation action pages could reasonably perceive an appeal to support EPA's efforts to finalize the rule as suggesting opposition to those bills.

NRDC launched its Brewers for Clean Water initiative on April 9, 2013, almost two years prior to the EPA blog post, and one year before the release of the proposed rule. NRDC, *Great Beer Needs Clean Water: NRDC Partners with Craft Brewers to Protect the Clean Water Act*, Apr. 9, 2013, available at www.nrdc.org/media/2013/130409.asp (last visited Dec. 7, 2015); Founders Brewing Co., *In Support of Brewers for Clean Water*, Apr. 9, 2013, available at <http://foundersbrewing.com/latest-news/2013/in-support-of-brewers-for-clean-water/> (last visited Dec. 7, 2015) (“The Natural Resources Defense Council (NRDC) announced their Brewers for Clean Water initiative today.”). But the grassroots lobbying prohibition is concerned with the message EPA conveyed apart from what NRDC may have contemplated in 2013. While we cannot know every change to the NRDC page made between the time of its launch and EPA's hyperlink, we do know that EPA affirmatively included the NRDC hyperlink in its communication, the language in the hyperlinked webpage encourages support of regulations fitting the description of the WOTUS rule, and the webpage displays an orange link button, leading to a webpage that notes congressional opposition and seeks support for EPA's efforts to finalize the “proposed Clean Water Protection Rule.”

Similarly, the Surfrider Foundation blog post was created on July 30, 2010, years before the EPA blog post. Surfrider Blog Post. The link button is part of the “Take Action” section of the webpage, which serves as a sidebar of the blog, and does not connect specifically to any particular article.²³ The text of the action prompts have

²³ At the time we began drafting this opinion, the “Take Action” section appeared on other pages of the Surfrider Foundation blog and alongside various blog posts. The section was a highly visible aspect of the webpage to which EPA's blog hyperlinked. The Surfrider Foundation blog site has since been redesigned and no longer features a “Take Action” section alongside the blog post.

changed during the time we have developed this opinion. Indeed, as EPA has argued, we cannot be certain an action prompt regarding EPA's proposed rule even existed at the time of the agency's blog post. EPA Response, at 15. Still, the Surfrider Foundation page has at various points contained action prompts encouraging readers to contact Congress in opposition to appropriations riders and legislation that would undermine the CWA or WOTUS rule, at a time when such measures were pending. EPA is responsible for the message it continues to endorse, rather than just the message as it may have existed at a single point in time.

The fact that the linked content was not EPA's does not excuse the agency from responsibility for its own message. Here, EPA conveyed a message through the expressive act of facilitating access to the NRDC and Surfrider Foundation webpages, especially during an atmosphere of ongoing public debate over the rule. This concept that including a hyperlink forms an expressive act and conveys a message that is informed by the linked content finds support in a line of court cases under the government speech doctrine. The Supreme Court and several federal circuit courts have, in other contexts, recognized that the government's decision to include third-party speech within its own communication channels is an expressive act in and of itself that conveys a message. *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 473, 476 (2009) (emphasizing city's control over selection of monuments as evidence of its control over its message); *Sutcliffe v. Epping School Dist.*, 584 F.3d 314, 331-33 (1st Cir. 2009) (choice of external websites to hyperlink using town website conveyed a message independent of the message within the third-party speech).²⁴

For example a school district used its website to urge opposition of a bill pending in the state legislature, including by linking to the "interactive" websites of two organizations opposing the bill. *Page v. Lexington County School Dist. One*, 531 F.3d 275, 278 (4th Cir. 2008). In rejecting the argument that the school district could not control its message because it could not control the content of the linked websites, the Fourth Circuit reasoned that the school district had provided information that other websites supporting its position existed and had facilitated viewing those sites, rather than incorporating all possible content displayed on the linked websites. *Id.* at 284. Significantly, the court noted that the selection of hyperlinks by the school district and its ability to remove them at any time evidenced control over the message and demonstrated that the hyperlinked websites were chosen, insofar as they could, to "buttress" the position the school district sought to convey. *Id.* at 284-85. In the present case, while EPA also did not directly

²⁴ Here we do not apply the case law for purposes of discerning constitutional violations, but use it as a reference to inform our analysis of EPA's message, as conveyed by its decision to hyperlink to the NRDC and Surfrider Foundation webpages.

incorporate the contents of the NRDC and Surfrider Foundation webpages, similar to *Page*, the decision to hyperlink to third-party websites using its official blog reflects an effort to facilitate the viewing of websites that were representative of EPA's own message or position.

Both webpages contained clear appeals to the public to contact Congress at a time when legislation to prevent implementation of the WOTUS rule was pending. When EPA hyperlinked to the NRDC and Surfrider Foundation webpages using an official communication channel belonging to EPA and visually encouraged its readers to visit these external websites, EPA associated itself with the messages conveyed by these self-described action groups.²⁵ It is this association combined with the clear appeals actually contained in the webpages that form the prohibited conduct.

EPA's choice of hyperlinks formed its own expressive act for which the agency is responsible. EPA sought to direct readers to the NRDC and Surfrider Foundation articles in support of statements made in its blog post. It cannot then disclaim association with the overall message the reader reaches when clicking those hyperlinks. While EPA cannot control external websites, it can certainly control its own. We conclude that EPA violated the anti-lobbying provisions contained in appropriations acts for FY 2015 when it obligated and expended funds in connection with establishing the hyperlinks to the webpages of environmental action groups.

3. EPA's Position

EPA argues that its campaign did not include any appeals to contact Congress regarding pending legislation. See EPA Response, at 12–13. But this argument necessarily turns on acceptance of the agency's view that it has no responsibility for linked content—an argument that we reject. See *id.*, at 14–15.

Acknowledging that websites are dynamic and content can change daily or hourly, EPA poses that it would be "a sweeping and unwarranted interpretation of the law to hold agencies' responsible for knowing every change made to someone else's webpage over time." *Id.*, at 15. But EPA overlooks the important element of control,

²⁵ In *Summum* the Supreme Court noted that "[i]t certainly is not common for property owners to open up their property for the installation of permanent monuments that convey a message with which they do not wish to be associated. . . . [P]ersons who observe donated monuments routinely—and reasonably—interpret them as conveying some message on the property owner's behalf." 555 U.S. at 471. Cf. *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2251 (2015) (where Texas exercised final approval authority over specialty license plates bearing Texas's name and displaying a message created by a third party, Texas "explicitly associate[d] itself with the speech on its plates").

which the Supreme Court recognized. See *Summum*, 555 U.S. at 473. We do not suggest that an agency is responsible for knowing every change an external organization makes to its website—but that an agency is responsible for its own message, which is the message it controls. See *Page*, 531 F.3d at 282, 285. See also *Sutcliffe*, 584 F.3d at 330–31.

It was EPA's decision to link to external websites belonging to environmental action groups to support statements made in its blog. In doing so, EPA associated itself with the content reached by clicking those hyperlinks. We are not speaking about "every link that a reader could get to from [the linked article]," as EPA suggests that we are, for those are not the facts before us. See EPA Response, at 15. Here we assess a website whose action prompt was integrated into the overall message and content of the hyperlinked webpage, with a large orange button leading to the direct appeal to contact senators; and a website whose action prompt was a visible element of the hyperlinked webpage itself, containing the appeal to contact Congress on its face.

EPA told us that it included the hyperlinks to explain why clean water is important to surfers and to demonstrate that brewers need clean water. *Id.*, at 14–15. The agency also noted, and we agree, that it is unclear when certain elements of the linked webpages emerged. *Id.*, at 15. But in discerning the message that EPA conveyed it is necessary to consider the visible content and overall message to which EPA's hyperlinks facilitated access.²⁶ Here, a reader of The EPA Blog viewing the hyperlinked articles could reasonably interpret the linked content as messaging endorsed by EPA.²⁷ We do not suggest that every hyperlink must constitute an endorsement of the linked webpage. But these facts—the continued

²⁶ In *Summum*, the Supreme Court emphasized that the government's display of a monument is perceived by the public to convey a government message. 555 U.S. at 470–72. Similarly, in *Walker* the Court noted that license plates are closely identified with government speech in the public mind. 135 S. Ct. at 2248–49 ("Indeed, a person who displays a message on a Texas license plate likely intends to convey to the public that the State has endorsed that message."). In both instances, the Court reasoned that the public could reasonably interpret the third-party speech in question as conveying a message of the government. See *id.*; *Summum*, 555 U.S. at 471.

²⁷ EPA's social media policy indicates that the agency has acknowledged this much, as the policy suggests inclusion of an exit message when connecting to third party content. EPA, *Using Social Media to Communicate with the Public* (July 7, 2005), available at www2.epa.gov/sites/production/files/2013-11/documents/comm_public.pdf (last visited Dec. 7, 2015). Such procedures were not applied in this situation.

debate surrounding the rulemaking, the inclusion of the hyperlinks to websites of environmental action groups within a blog post announcing a campaign designed to recruit public voices to indirectly support finalization of the rule, and the pendency of legislation that would directly prevent the rule from moving forward—preclude a good faith characterization of these hyperlinks as mere citations.

CONCLUSION

The use of appropriated funds associated with implementing EPA's Thunderclap campaign and establishing hyperlinks to the NRDC and Surfrider Foundation webpages violated prohibitions against publicity or propaganda and grassroots lobbying contained in appropriations acts for FYs 2014 and 2015. Because EPA obligated and expended appropriated funds in violation of specific prohibitions, we also conclude that EPA violated the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A), as the agency's appropriations were not available for these prohibited purposes. Accordingly, EPA should report the violation to the President and Congress, with a copy to the Comptroller General, as required by the Antideficiency Act.²⁸ The agency should determine the cost associated with the prohibited conduct and include the amount in its report of its Antideficiency Act violation.

If you have any questions, please contact Edda Emmanuelli Perez, Managing Associate General Counsel, at (202) 512-2853, or Julia C. Matta, Assistant General Counsel, at (202) 512-4023.

Sincerely,



Susan A. Poling
General Counsel

²⁸ 31 U.S.C. § 1351. The Office of Management and Budget has published requirements for executive agencies for reporting violations. OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, §§ 145, 145.8, available at www.whitehouse.gov/omb/circulars/a11_current_year/a11_toc (last visited Dec. 7, 2015).

Chang, Lisa

From: Chang, Lisa
Sent: Wednesday, March 23, 2016 9:51 PM
To: Wright, Garth
Cc: Murchie, Peter
Subject: FW: further expansion of What's Upstream Campaign
Attachments: A354E1CF-2D7B-434A-88A7-52B04C311AE1{33}.png

Garth,

Can we meet soon to talk about a new twist on the Whatsupstream campaign that the subawardee would like to pursue? It sounds like they are simply trying to more precisely target their current campaign, but I am concerned that the methods they would use (developing lists of people who have signed petitions in the past) may come closer to crossing the line on grant T&C. See below.

I will send you a meeting invitation.

Lisa

From: Dietrich Schmitt [dschmitt@nwifc.org]
Sent: Wednesday, March 23, 2016 5:06 PM
To: Chang, Lisa
Cc: rnorman@nwifc.org
Subject: FW: What's Upstream Campaign

Hi Lisa,

I have been provided more detail on change.org<<http://change.org>> and the services they provide- this is proposed new work that I was concerned may have represented a change in scope from task 2 of the FY 2014 workplan. I thought it would be most useful for you to review the communication exchange to understand the change.org<<http://change.org>> services. My initial assessment is that this does not constitute a change in scope. When you have had a chance to review let's discuss.

Thanks,

Dietrich

From: Matt Davidson [mailto:mattd@strategies360.com<mailto:mattd@strategies360.com>]
Sent: Wednesday, March 23, 2016 4:08 PM
To: Dietrich Schmitt <dschmitt@nwifc.org<mailto:dschmitt@nwifc.org>>
Cc: Larry Wasserman <lwasserman@swinomish.nsn.us<mailto:lwasserman@swinomish.nsn.us>>; Jeff Reading <jeffr@strategies360.com<mailto:jeffr@strategies360.com>>
Subject: Re: What's Upstream Campaign

Dietrich,

That's essentially the summary of the campaign. A statement on the issue is sent to like minded individuals who can choose to support our issue. If they do support us, we'll get access to their contact information. We will then leverage this to do a data match on social media to target them in a non-intrusive capacity. This will drive them to the website where they can choose to send a letter in the same capacity we have already been doing. It's just a more targeted way of reaching the individuals most likely to be engaged and interested in this issue.

Regards,

Matt D.

[cid:E8FF1544-7C31-49B7-BACA-08F526FC06AD@strategies.corp]

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www.strategies360.com<<http://www.strategies360.com/>>

On Mar 23, 2016, at 4:05 PM, Dietrich Schmitt <dschmitt@nwifc.org<<mailto:dschmitt@nwifc.org>>> wrote:

Thanks for the quick response.

So let me summarize my understanding. Strategies submits media materials messaging, i.e. those developed through the whatsupstream effort and petition statement (which may or may be used for some future "actual" petition) to change.org<<http://change.org/>>. The change.org<<http://change.org/>> website then uses information to match other past visitors to the website with like-minded individuals and then sends the media content including the petition statement to this pool and a subset of respondents indicates they are supportive and then their contact information is shared with the campaign. So website essentially perpetuates its existence by building contact lists. Which allows for very targeted campaigns.

Is this the correct understanding?

Dietrich

From: Matt Davidson [<mailto:mattd@strategies360.com><<mailto:mattd@strategies360.com>>]
Sent: Wednesday, March 23, 2016 3:26 PM
To: Schmitt, Dietrich <dschmitt@nwifc.org<<mailto:dschmitt@nwifc.org>>>
Cc: Larry Wasserman <lwasserman@swinomish.nsn.us<<mailto:lwasserman@swinomish.nsn.us>>>; Jeff Reading <jeffr@strategies360.com<<mailto:jeffr@strategies360.com>>>
Subject: Re: What's Upstream Campaign

Dietrich,

It was great getting the chance to connect today.

I wanted to follow up on the opportunity that currently exists to increase our campaign results with a [Change.org](http://change.org/)<<http://change.org/>> campaign. With this network, they conduct thousands of petitions and have millions of individuals in their database who have signed on for various initiatives. For example, someone who has signed a prior petition for environmental protection and who lives in Skagit County, could create a great opportunity for us to engage

with. We can then quickly build up a list of supporters that show a strong level of interest in our cause. We can then use this list to message our supporters through social media to go to the What's Upstream website to contact their legislators. I want to stress that this is an exercise in list building so that our campaigns can be more targeted. This is simply an extension of what we've already been doing. In no way will we be presenting a petition to any legislative body at any time.

I hope that helps to clear up any confusion that may exist but please just let me know if there are any additional questions I can help to answer. Thanks!

Regards,

Matt D.

<image001.png>

Matt Davidson
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T 206-282-1990
C 818-599-7327
www.strategies360.com<<http://www.strategies360.com/>>

On Mar 23, 2016, at 2:29 PM, Schmitt, Dietrich <dschmitt@nwifc.org<<mailto:dschmitt@nwifc.org>>> wrote:

Got it.
thx

On Wed, Mar 23, 2016 at 1:23 PM, Larry Wasserman
<lwasserman@swinomish.nsn.us<<mailto:lwasserman@swinomish.nsn.us>>> wrote:
Will call at 2:45

Sent from my Verizon Wireless 4G LTE smartphone

Dietrich Schmitt
NWIFC Salmon Recovery Projects Coordinator
6730 Martin Way East
Olympia, WA 98516

email: dschmitt@nwifc.org<<mailto:dschmitt@nwifc.org>>
phone: 360.528.4339

6/2/15 Briefing for OWW OD and PST PM on Swinomish Public Outreach/Education Project
DRAFT lhc 6/2/15

- **History of “public outreach” project** and relevant exchange between EPA, NWIFC, and Swinomish
 - **2011. Initial proposal for this project came in 2011.** Purpose of project was to first collect information on public perceptions of water quality in the Skagit Basin, and then to conduct a public education effort that would lead to improved practices and regulatory certainty that instream resources would be protected, consistent with the Skagit Chinook Recovery Plan.

(b)(5) ACP

- **2013 funding.** Swinomish added to the project that the desired “final outcome of this project will be a ballot initiative during the 2014 election cycle to require regulations to provide for riparian buffers on agricultural lands bordering salmon streams.”
 - One of the outputs of the award was the “whatsupstream.com” website, with ads on NPR and elsewhere pointing to this website.
 - I raised this to Rick, who in turn raised this to Dennis, and Tom Eaton.

(b)(5) ACP

- Following discussion between Rick, Larry, and NWIFC, Larry decided to limit the proposal to the broad public outreach and education on non-point water quality issues that they had been pursuing under the grant. They decided that none of the work on a ballot initiative would be pursued with NEP funds.
- Side note: Swinomish also explored using funds from a CWA citizen suit (against a Dike District) consent decree to campaign on behalf of the riparian buffer initiative. When I last heard about this in late 2013, it seemed that Swinomish ultimately did not pursue that.
- **May, 2015.** Swinomish submitted a revised proposal for the same project, significantly increasing activity under the “public education” element of the project. See attached e-mail from Lisa to Tiffany dated 5/19/15.
- **Consistency with Action Agenda:**
 - **Skagit Chinook Recovery Plan:** “Successful habitat protection depends on three important components. First is a public that recognizes the importance of salmon habitat protection, and that does not condone actions by others that do harm to these resources. This sentiment should be nurtured through a vigorous public information effort, and by providing the technical information to assist landowners and others in their efforts to comply with existing regulations. Technical and financial resources should also be made available to those who voluntarily want to

do even more to protect and restore salmon habitat if they so choose. Providing people with the information to make informed decisions that will be protective of salmon habitat when working in and around streams is the first step towards habitat protection. To summarize, providing people the tools to "do the right thing" capitalizes on the vast majority of the public that wants to provide for a future for Skagit River Chinook."

- **A3.2 Retain economically viable working forests and farms:** Agricultural lands. As described earlier, since 1950 we have lost more than half of the farmland in the Puget Sound region. Effectively preserving agricultural land will involve tackling a complex set of interrelated issues including real work to ensure that agriculture continues to be a viable, and vibrant, industry in Puget Sound.
- **A.3.2.2 Agriculture strategy.** The Partnership, in collaboration with WSDA, Ecology, WSCC, and agricultural partners has convened an advisory committee to consider development of a Puget Sound agricultural strategy. The strategy will identify a) needs for maintaining the health of the industry b) key areas where the agricultural industry can contribute to the protection and restoration of Puget Sound and c) challenges to be addressed for achieving these goals and implementing a successful strategy. This near term action could be further amended or integrated into the regional funding strategy as appropriate.
- **D2. Support and Build Strategic, Collaborative Partnerships.** Effective partner relationships are essential for achieving a shared vision of recovery and working through challenging issues. This strategy highlights three important areas of broad collaboration—that differ from the issue-specific collaboration described elsewhere in Section 3. A description of Partnership-related collaborative structures and partnerships is included in Appendix A, Puget Sound National Estuary Program Management Conference Overview.
- **D2.1 Advance the coordination of local recovery actions via local integrating organizations.** Many locally based groups exist for salmon recovery, marine resource conservation through the Northwest Straits Initiative, watershed management (RCW 90.82) and protection, and water quality. In any given area, there are many local groups working on recovery-related activities, and these groups are often not adequately connected to each other. The Partnership is working with local interests to better coordinate implementing partners, and create a more effective and collaborative approach to clarify local priorities, accomplish identified work, address problems, and provide technical support.
- **Potential remedies**
 - Recommend adjustments to project to better align with NEP, Management Conference, and Action Agenda
 - Recommend that alternate sources of funding be used for work that conflicts with NEP, Management Conference, and Action Agenda goals and objectives
 - Other?
- **Next steps**
 - Discussion between Angela/Dan and Larry?
 - Other?

Briefing for Puget Sound Program Manager, 1-6-14

Swinomish Proposal for 2013 NEP Funds

Internal deliberative; not subject to FOIA

Background

- In 2013, Swinomish Tribe explored using CWA citizen suit money to campaign for riparian buffer ballot initiative; would require negotiation with Dike District
- In November 2013, Swinomish Tribe submitted proposal to continue with 4th year of a “public outreach and education” project
 - Project linked to Salmon Recovery Plan and Action Agenda
 - New project outcome of 2014 ballot initiative requiring riparian buffers
 - Proposal shared with EPA and PSP on 11/20 as part of routine 2-week review

Current status of Swinomish Public Outreach and Education Project

- Strategic plan, surveys, messages completed
- Social and paid media campaigns underway (e.g., WhatsUpstream.com)
- Project delayed by several months
- FY13 proposal in review status

Issues

- Consistency with grant conditions
 - Lobbying
 - Recognition of EPA funding
 - Other
- Consistency with Action Agenda; Management Conference
 - Action Agenda (pp. 24, 27)
 - Management Conference forums, mechanisms
 - Coordination with other funded activities (e.g., PSP OES work)

Next steps

- Extent of support
- Discussion with Larry and NWIFC 1/9
 - Clarifications on proposal
 - Schedule for initiative
- Possible other discussions:
 - Management Conference
 - EPA RA

Chang, Lisa

From: Rodriguez, Socorro
Sent: Wednesday, January 15, 2014 3:40 PM
To: Chang, Lisa; Parkin, Richard; Rylko, Michael; Bonifaci, Angela; Bonifacino, Gina
Cc: Cohon, Keith
Subject: RE: Swinomish will be resubmitting revised NEP proposal

Lisa, thanks for letting me know.
Socorro

-----Original Message-----

From: Chang, Lisa
Sent: Wednesday, January 15, 2014 3:38 PM
To: Parkin, Richard; Rylko, Michael; Bonifaci, Angela; Bonifacino, Gina
Cc: Rodriguez, Socorro; Cohon, Keith
Subject: Swinomish will be resubmitting revised NEP proposal
Importance: High

Rick et al.,

Larry Wasserman just called to tell us that Swinomish has decided to limit their proposal for FY13 NWIFC LO (NEP) funding strictly to the broad public outreach and education on non-point water quality issues that they had been pursuing under this grant all along. They have decided that none of the work they seek to do under the NEP funds will relate to a ballot initiative. Larry said he will revise and resubmit the proposal to this effect. He said to call him if anyone has any questions.

Lisa