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December 8, 2016

(Via Email: pdcc@pdcc.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 – Response to McLerran Request for Dismissal
PDC Complaint No. 8123

Dear Ms. Lopez:

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

A. PDC enforcement against Dennis McLerran and Larry Wasserman are not barred under the principles of sovereign immunity

As an initial matter, we urge the Commission to reject the claims of sovereign immunity asserted by the Swinomish Indian Tribal Community and the U.S. Environmental Protection Agency with respect to the conduct of their employees, Wasserman and McLerran, in this matter. As employees, they have at best an affirmative defense of qualified immunity and both have the burden of proof that they are entitled to such protection. Neither individual has the right or privilege to violate the laws of the State of Washington by their employment. This is a matter of black letter law. *Harlow v. Fitzgerald*, 457 U.S. 800 (1972). Under *Harlow*, officials “are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” 457 U.S., at 818. Whether an official may prevail in his qualified immunity defense depends upon the “objective reasonableness of [his] conduct as measured by reference to

clearly established law.” *Id.* (footnote deleted) (cited and quoted in *Davis v. Scherer*, 468 U.S. 183, 191 (1984)).

For the PDC to rule otherwise would substantially weaken the core values of transparency that are embodied in the lobbying and campaign registration and reporting requirements in the state of Washington. The Swinomish are asserting that these laws simply do not apply to the conduct of the tribe or its employees. If so, one can imagine an entirely new business opportunity for the Swinomish to accept unreportable donations and for Wasserman to spend those funds at will in lobbying and political campaigns in our state. Wasserman has no more right to drive a tribal vehicle during his hours of employment on state roads in violation of traffic laws than he does to conduct grass roots lobbying directed at the state legislature or a political campaign in state elections that is not properly registered and reporting under state law. In both cases he has personal responsibility and liability for violations of state law.

B. Larry Wasserman concedes in his response to the PDC that he was engaged in an unregistered grass roots lobbying effort and unregistered political campaign

For Wasserman, there is little question that he is not entitled to qualified immunity. There is no dispute that Wasserman managed the What’s Upstream campaign. He was so identified in the bi-annual “FEATS” reporting documents linked in our original complaint letter. Wasserman was the primary contact with EPA and held enough authority in the campaign to threaten the EPA Regional Administrator in the presence of a tribal attorney in a telephone call on July 16, 2015, as described below.

There is also no dispute that Mr. Wasserman was engaged in grass roots lobbying. The December 1, 2016, letter to the Commission on behalf of the Swinomish makes clear that the What’s Upstream campaign was intended to inform and influence the Legislature. The only defense to the obvious point of the campaign to influence legislation presented in the letter is the assertion that the campaign was not linked to specific legislation. This is an erroneous interpretation and application of RCW 43.17A.640(1). The requirements for registration of a grass roots lobbying campaign are not dependent on pending legislation. *See* PDC Declaratory Order No. 12 (May 24, 1994.). The December 1, 2016, letter offers no rebuttal to a clear violation of state law by Wasserman.

It is equally clear in the December 1, 2016, letter that Wasserman had engaged in a political campaign in 2015. As previously presented to the Commission and confirmed by the McLerran declaration, this was the intent of Wasserman in 2014. McLerran claims in his declaration that he personally intervened to have Wasserman remove the initiative campaign signature gathering as a component of the EPA grant work plan that was subject for review and approval by EPA and McLerran. The Swinomish letter concedes that Wasserman expended funds on this campaign at least in the “early planning stages.” For whatever that means, it certainly includes the 2012 and 2014 polling funded by the EPA under McLerran’s oversight that included

identification and limitation of polling results to likely voters. Polling data on likely voters is not relevant to public education but very important in grass roots lobbying and initiative campaigns. It should be noted by the Commission that while McLerran states in his declaration that he precluded Wasserman from using federal grant funds for signature gathering, he left in place the polling component of the work that was clearly intended in the work plan and in the reporting of the poll results to support the legislative and political campaign.

C. McLerran has not established his right to qualified immunity

It is possible that McLerran was not aware that Wasserman and Strategies 360 were violating state law. As such, McLerran may be entitled to immunity for failing to exercise his responsibility to ensure that Wasserman and Strategies 360, Inc. properly registered and reported their campaign. That seems unlikely, however, for an individual who has been admitted to practice law in the state of Washington for over 34 years, has served as a city attorney for the city of Seattle, planning director for the city of Port Townsend, the executive director of a regional air authority and active in Washington politics as indicated by the Commission database on political contributions. McLerran's conduct, based on the available record, lacks the objective reasonableness that would support an affirmative defense of qualified immunity to enforcement by the Commission. McLerran accordingly has no immunity for what appears to be a joint scheme with Wasserman and Strategies 360 to allow the expenditure of federal funds for activities that must be registered and reported to the Public Disclosure Commission. It is not within the scope of his official duties or discretionary authority to participate in a violation of state campaign and lobbying requirements.

1. McLerran admits that he approved the expenditure of federal funds for polling to identify likely voters for the purposes of influencing the state Legislature and to support an initiative campaign

McLerran played a personal, direct, and unlawful role in allowing the use of federal funds for public opinion polling in 2014. McLerran states under penalty of perjury in his declaration that "Several years ago I learned from EPA staff that the Swinomish Tribe (sic) was suggesting that they would use their NWIFC sub-award funding to build support for a state ballot initiative." McLerran claims that he instructed "staff" to inform the tribe that this would be an inappropriate use of federal funds. All McLerran limited, however, was the ability of Wasserman to use Strategies 360 to collect signatures on an initiative campaign. McLerran approved the use of federal funds by Wasserman to conduct polling through Strategies 360 in 2014 that identified and focused on likely voters.

The Swinomish Indian Tribal Community makes the utterly absurd statement that Wasserman was not engaged in lobbying or a political campaign by use of the polling as the results were made publicly available on the What's Upstream web site. For a web site launched, as described by Strategies 360, just in time for the 2016 session of the Legislature, a key message to legislators was that likely voters supported the Swinomish demands for new regulations for agricultural practices. The poll further speaks for itself as a common tool used by political

campaigns to identify key messages that resonate with likely voters. Political campaigns also frequently release such polling to build support for their candidate or issue.

2. McLerran misrepresents that EPA attorneys advised him in July 2015 that EPA had no authority to control illegal expenditures by Wasserman

McLerran asserts in his declaration that “EPA legal staff advised me that EPA had very limited authority over a sub-award...” Save Family Farming has a pending Freedom of Information Act request on all public records relating to the What’s Upstream campaign. EPA has been slow and recalcitrant in responding to that request and nothing released to date substantiates that any EPA attorney so advised McLerran prior to his meeting with Wasserman on July 16, 2015. It was following that meeting that EPA staff objections to the Wasserman campaign were stifled and Wasserman was enabled to re-launch the What’s Upstream campaign website.

McLerran appears to have adopted his own limited view of EPA authority in July 2015 as a political expediency to allow the What’s Upstream campaign unfettered use of federal funds to promote changes to state law. It was clear in early 2015 that the Swinomish and Wasserman were gearing up for a full-blown grass roots campaign to influence the state Legislature and continue a parallel initiative campaign. This was expressed in the Year 5 work plan submitted to EPA on December 22, 2014. (Attachment, Exhibit A.) The plan made clear the intent of Mr. Wasserman to direct “targeted information” to “decision makers to support improved regulatory mechanisms.” (*Id.*, at 4.). This would be based on strong polling data of “very strong support” by voters based on polling paid for under the same grant. (*Id.*) The entire budget for this plan was allocated to Strategies 360 for “professional services.” Mr. Wasserman states in the work plan that “Strategies 360 will be coordinating meetings with other collaborating entities and **organizing the Swinomish Tribe’s signature gathering efforts.**” (*Id.* Emphasis added.)

EPA staff raised concerns about this direction of the campaign as early as April 23, 2015, when they reviewed the plan and a progress report filed by Mr. Wasserman on April 23, 2015. In the progress report, which describes the expenditure of federal funds from October 2014 through March 2015, the completed and on-going work included strengthening a coalition to advance new regulations and building public support for a “regulatory remedy.” (Attachment, Exhibit B.) EPA staff was sufficiently concerned about the campaign based on the plan, progress report and meeting with Mr. Wasserman to order a suspension of the EPA funded campaign pending further review. In a May 19, 2015, email EPA wrote “We would like to further discuss the shift in emphasis between the original narrative and ... the actual direction of the project as we understand it from today’s conversation ... We would appreciate it if we could have a conversation with NWIFC and the subawardee before work proceeds much further.” (Attachment, Exhibit C.)

EPA staff determined after May 19, 2015, that the What’s Upstream campaign violated the terms of the federal grant and applicable prohibitions on the expenditure of federal funds. This determination is reflected in numerous internal emails between Region 10

staff. The culmination of this review is reflected in an email dated July 1, 2015, from Tony Fournier, Acting Manager of the EPA Region 10 Grants and Interagency Agreements Unit. (Attachment, Exhibit D.) Mr. Fournier states unequivocally that “if we determine that a particular activity and/or expense is unallowable, we can reasonably recover the costs directly from the primary recipient.” That is to say, EPA can disallow any expenditure by the Swinomish as a subawardee on the grant from the EPA to the Northwest Indian Fisheries Commission (NWIFC). Mr. Fournier pointed out in his email that the What’s Upstream campaign violated the prohibition on using federal funds for public relations under OMB regulations. 2 CFR §200.421. Mr. Fournier was unequivocal: “I personally find their approach/messaging violates both the letter and intent of this principle.”

On June 26, 2015, Angela Bonifaci and Lisa Chang, EPA staff, advised Larry Wasserman as well as Tiffany Waters and Fran Wilshusen from NWIFC that EPA has been advised by its counsel that it had a “regulatory mechanism” to disapprove the What’s Upstream campaign. (Attachment, Exhibit E.) On July 16, 2016, Lisa Chang further confirmed in an email to Angela Bonifaci that “Dan relied on the “substantial involvement” [terms and conditions] and other grant policies for our oversight authority on the Swinomish subaward.” Ms. Chang further states, “He was willing to say that EPA couldn’t allow the work to go forward without further discussion/involvement on the basis of what we have seen of the project to date.” (Attachment, Exhibit F.) The “Dan” referenced in this email is presumably Daniel Opalski, the regional director of the EPA Office of Water and Watersheds. At this point it would appear that the entire Region 10 staff involved in the grant to the Swinomish, including the Office of Regional Counsel, had concluded that the campaign was unlawful and that EPA had the authority to shut it down.

The efforts by EPA staff to discuss these matters with Mr. Wasserman, see Appendix, Exhibits C through I, were preempted by the meeting McLerran had by telephone with Wasserman and his attorney on July 16, 2015. (Attachment, Exhibit G.) Lisa Chang, the EPA grant administrator for funds being used by Wasserman and Strategies 360, expressed concern in advance of the meeting that McLerran planned to meet a Swinomish attorney with “no ORC [Office of Regional Counsel] or GIAU [Grants and Interagency Agreements Unit] support.” (Attachment, Exhibit F.) The email states, “It seems to be a vulnerable position for EPA to be in to be speaking to the Swinomish counsel without EPA counsel on hand.” (*Id.*)

At the July 16, 2015, meeting Wasserman opened with both a demand and a threat by “asking Dennis how invested he was in the discussion on this issue, or should it be elevated?” (Exhibit, Attachment H.) McLerran, without the benefit of EPA counsel present and in disregard to previously stated positions of the Office of the Regional Counsel and the managers of the regional Grants and Interagency Agreements Unit and Office of Water and Watersheds, “emphasized” to Larry Wasserman and his attorney that this is a “policy issue, and not a legal issue.” (*Id.*)

From this limited record it appears that McLerran had a direct, active and successful role in thwarting EPA staff review and questions about the use of federal funds. It appears that EPA Region 10 staff were actively discussing the campaign with Wasserman before the grants staff raised concerns in April 2015. It appears that while Wasserman and Strategies 360 engaged their attorneys in discussions with Mr. McLerran, Mr. McLerran never solicited or relied on independent legal advice from the EPA Regional Counsel Office. It also appears that EPA staff, after the intervention of McLerran in July 2015, accepted without question the expenditure of federal funds to launch a web site with a “take action” menu that directed communications directly to the state Legislature promoting new state laws to govern streamside buffers for agricultural practices in Washington. There was no illusion or potential source of confusion as to the target and goal of the campaign reviewed and approved by Mr. McLerran over, it seems, the repeated concerns of EPA staff that the campaign was in fact contrary to the intent of the subject grant and an otherwise illegal use of federal funds that violated state law.

The only record of involvement by EPA regional counsel in this matter prior to the July 16, 2015, meeting between McLerran and Wasserman is an email inquiry from EPA staff to Lisa Castanon in the regional counsel’s office dated June 23, 2015. (Attachment, Exhibit I.) In that email, staff asks:

Are you still the correct contact for grants questions? The Puget Sound program has had some discussion with the Grants program (Tony Fournier) and he has suggested bringing ORC [Office of Regional Counsel] into this discussion. An overview of the issue in the message below....

In the “message below” staff included the assessment that the What’s Upstream campaign was not consistent with the purpose of the EPA grant:

...with the proposal for 2014 funds, in conjunction with reviewing some of the products produced in earlier years of the award, EPA staff now believe that the proposed work does not meet the stated purpose of the RFP and may even undermine it. Specifically, we believe that the project as actually implemented is not “consistent with the Action Agenda” and can no longer demonstrate a “strong, well-documented and supported need within the framework of Puget Sound protection and restoration efforts.”

Id. (Emphasis in original) (Email from Lisa Chang to Tony Fournier copied to Dan Opalski and other EPA Region 10 managers.)

The only record of a response from Lisa Castanon and the Office of Regional Counsel is reflected in the meeting notes from the telephone call Lisa Chang and Angela Bonifaci, EPA managers of the grant, had with Wasserman and staff from the Northwest Indian Fisheries Commission on June 26, 2015. In that call the EPA staff stated, “**Our counsel has**

advised us that we do have a regulatory mechanism...we don't want to go there." (Ex. E.) There is no record whatsoever that anyone from the Office of Regional Counsel advised McLerran prior to July 16, 2016, that EPA could not limit or control the expenditure of federal funds by Wasserman and Strategies 360 contrary to the representations by EPA staff to Wasserman on June 26, 2015. Indeed, it appears from this record, that the entire purpose of the July 16, 2016, telephone conference between Wasserman and McLerran was to go over the heads of the EPA grant staff and regional counsel.

Under the objective reasonableness test for qualified immunity, there is no basis for concluding that McLerran with his background as a government attorney, agency director and long involvement in Washington politics had any illusion about the fact that he was overriding professional EPA staff to support political efforts in Washington. As such, McLerran has no immunity. It is not within his authority or discretion as a federal official to authorize the expenditure of federal funds for grass roots lobbying that does not comply with state laws.

3. McLerran misrepresents to the PDC that he was not aware of the What's Upstream "Take Action" button and concerns about the campaign until the Spring of 2016

McLerran makes the statement in his declaration that he was not involved in the What's Upstream campaign after the July 16, 2015 meeting, until staff informed him in the Spring of 2016 that the "agricultural community was upset." He was in fact demonstrably aware in December 2015 that the campaign website had been updated, relaunched, and was structured to influence the 2016 session of the Legislature. In "Briefing/Talking Points – Whatsupstream.com" used by McLerran at a December 2015 meeting with the Washington Conservation Commission and other agencies, 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.**" (See Ex. U to Save Family Farming Supplemental and Amended Complaint) (Emphasis added.). We suspect that McLerran learned at that meeting in December 2015, if not before, that the "agricultural community" was upset about the campaign.

D. The request to dismiss the complaint against McLerran is premature

Save Family Farming respectfully requests that the Commission deny EPA's request to dismiss the complaint against McLerran until EPA has fully and completely responded to the pending May 2016 FOIA request from Save Family Farming. As each new batch of documents is dribbled out by EPA there is new information regarding the deep involvement of McLerran in the campaign and facts relevant to the EPA claim of sovereign immunity. Save Family Farming requests that its complaint remain active until that process is complete. The Commission should also defer action until it has an opportunity to review a third-party audit conducted by the Swinomish and an anticipated EPA Office of Inspector General report described in the attached letter from Congressman Dan Newhouse to EPA Administrator Gina

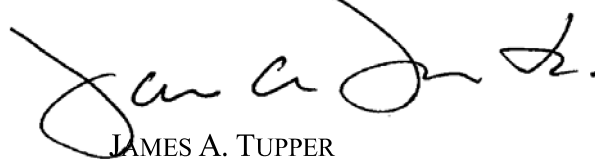
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McCarthy dated December 6, 2016. Congressman Newhouse has requested a copy of the audit by December 30, 2016.

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

A handwritten signature in black ink, appearing to read "James A. Tupper", is written over the printed name.

JAMES A. TUPPER

Attachments

Congress of the United States

House of Representatives

Washington, DC 20515-4704

December 6, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

Dear Administrator McCarthy,

I appreciate your staff briefing me on the Environmental Protection Agency's (EPA) grant and contract processes, as requested in my letter to you dated September 20, 2016. While I appreciated the opportunity to discuss these issues of significant concern with members of your staff last week, unfortunately, details disclosed in the briefing raised new concerns and additional consternation regarding EPA's response to this serious legal matter. As a result, I write to request additional information on EPA's review of the "What's Upstream" campaign and ultimately your assistance in resolving this troubling situation.

As mentioned in the letter dated September 20, I and other Members of Congress were interested in receiving a briefing from you, or the appropriate staff, concerning the commitment you made to Senator Deb Fischer in a Senate Committee on Environment and Public Works (EPW) hearing on April 19, 2016. At that time, upon being questioned by Senator Fischer regarding the "What's Upstream" campaign – an EPA-funded campaign that used taxpayer dollars to publicly attack farmers and attempt to influence the votes of Washington State legislators – you reassured Senator Fischer by committing EPA to a review of your contracts to ensure subcontractors are meeting and complying with all applicable laws and regulations, and that the tone and interest of EPA is reflected in its contracts. During my recent briefing with your staff, I was very disturbed to learn that, to date, EPA has not even begun to conduct the review you committed your Agency to undertake over seven months ago on April 19. EPA staff located in Washington, D.C. expressed that an EPA Region 10 review of their grant and contract processes fulfilled the commitment you made to Senator Fischer, and that a nationwide review by EPA would not be conducted until the Office of Inspector General (OIG) completed its investigation into the "What's Upstream" campaign. Region 10 personnel added that upon culmination of their review, they put in place additional terms and conditions for contracts to ensure taxpayer funds were not being misused, and that the tone and interest of collaboration with agriculture was reflected.

Additionally, Region 10 staff expressed that an independent auditor – who was hired by the Swinomish Tribe, and not approved by EPA – found that the "What's Upstream" campaign had not improperly used taxpayer dollars to lobby or advocate. Equally troubling, when questioned about specifics of the audit, several officials on the call did not seem to have a

knowledge of the details of the audit. Region 10 staff also indicated that grant monies had not been used on billboards and other campaign materials, but had been used on the campaign's website. As you may be aware, this auditor's report and the Region 10 staff review was used by Region 10 staff to award the National Indian Fisheries Commission – of which the Swinomish and "What's Upstream" were subgrant recipients – an additional National Estuary Program grant of \$25 million over five years. It is also concerning to me that your staff indicated that EPA is not working to complete a review of grants until the OIG report is finished, however EPA is continuing to award grants to the What's Upstream," despite an open OIG investigation into the matter.

Additionally, I am very troubled to learn that EPA and the Swinomish Tribe have rebuffed Washington State Public Disclosure Commission (PDC) inquiries seeking information pertaining to EPA's and the tribe's adherence to state law while conducting the "What's Upstream" campaign. I'm certain there is no need to remind you that EPA and its awardees have an obligation to adhere to all applicable federal, state, and local laws while conducting their activities. I would also have you recall that in a letter to you dated April 20, 2016, I and 144 of my colleagues in the U.S. House of Representatives strongly advised, "EPA's full and swift cooperation with all investigations and imminent oversight inquiries into this matter." If Washington State authorities perceive that legal questions remain concerning the EPA's or the Swinomish Tribe's administering of grants pertaining to the "What's Upstream" campaign, I highly advise that your staff offer their full and swift cooperation, as Congress has directed.

Finally, until the completion of the OIG investigation into "What's Upstream," I urge you in the strongest of terms to make whatever revisions may be necessary to the recent Northwest Indian Fisheries Commission grant so as to preclude any additional taxpayer dollars from being used to fund the "What's Upstream" campaign.

Based on the available facts and information provided in this recent briefing, I request that the EPA expeditiously respond to the following questions in writing:

1. On April 19, 2016, at a Senate EPW hearing, Senator Fischer inquired about "What's Upstream" by asking, "are you planning on putting protections in place in the Agency so we can be sure that grant funds are not used in that manner in the future?" You responded by stating, "we need to relook at the details and the scope of our contracts, so that subcontractors that are then used not only meet the legal merits of what we have to do, but also reflect the tone and interest of EPA in collaborating with agriculture on these issues." Senator Fischer followed up by asking, "could you get information to my office about what policies and procedures you are putting in place that would prevent misuse in the future?" You replied, "certainly."
 - a. When committing this review to Senator Fischer, did you intend to conduct a full EPA review, or just a Region 10 review?
 - b. If your intention was for a full EPA review, why has no effort been made to date to conduct that review?

- c. Have you or your Agency provided Senator Fischer with the materials she requested concerning the policies and procedures you are putting in place to prevent future grant misuse? If so, please also provide me with a copy of those policies and procedures, as well as details on when they were implemented.
- 2. EPA staff indicated that no effort would be made on any full EPA review until the completion of the ongoing OIG investigation into “What’s Upstream.” However, OIG had not announced its intent to conduct an investigation into “What’s Upstream” until May 13, 2016 – nearly a full month after you committed to a grant process review. Please account for why there were not even initial steps taken by EPA to begin this review in the month prior to the OIG announcement.
 - 3. EPA Region 10 indicated that Region 10 staff and an independent auditor had cleared “What’s Upstream” of any improper use of taxpayer dollars to lobby or advocate. Please provide a copy of this audit, as well as any accompanying or supplementary materials.
 - a. The “What’s Upstream” website contained a button titled, “Take Action! We’ve made it simple.” This button directed site visitors to a letter that, according to the site, could be, “sent to various Washington Senators whose votes we hope to influence.” If EPA Region 10 staff and an independent auditor maintain this did not constitute lobbying or advocacy, please provide a copy of the definition and the statute EPA is using in this determination.
 - b. This button and letter were removed from the website in the weeks following increased scrutiny of the campaign. If Region 10 staff and an independent auditor cleared “What’s Upstream” of any misuse of taxpayer dollars to advocate or lobby, why was this button and letter removed from the site?
 - 4. EPA staff insist that the Region 10 grant and contract process review fulfilled the obligation to which you committed your Agency during questioning from Senator Fischer. As part of your commitment to Senator Fischer, you stated that you wanted to ensure that contractors reflected, “the tone and interest of EPA in collaborating with agriculture on these issues.”

As mentioned, changes have been made to the “What’s Upstream” website in recent months. Yet to date, even after the Region 10 review, the “What’s Upstream” website still depicts graphic images of dead fish and polluted water, as well as statements such as, “unregulated agricultural practices send harmful pollutants into our waterways, degrading our water, destroying vital habitat and endangering our fish.”

- a. Do you feel that the website’s current content reflects the, “tone and interest of EPA in collaborating with agriculture on these issues?”
- b. As mentioned in question 3(b), the “Take Action!” button was removed from the “What’s Upstream” website, which according to EPA was done for reasons other than improper use of funds to lobby or advocate. Assuming that the button and letter were

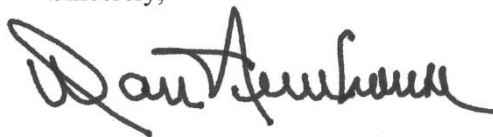
removed because they did not reflect the “tone and interest of EPA in collaborating with agriculture on these issues,” why then was additional inflammatory content not removed from the website?

5. As mentioned, EPA has since granted another \$25 million to the Northwest Indian Fisheries Commission with no prohibitions on potential subgrants to the Swinomish Tribe for the “What’s Upstream” campaign.
 - a. Why is EPA not restricting additional funds to a subgrant awardee for the very activities under which it is currently the subject of an OIG investigation?
 - b. As indicated in question 2, EPA staff indicated to me that it was premature to conduct a national review of EPA’s grant and contract processes until the completion of the OIG investigation into “What’s Upstream.” If a national review of EPA’s grant processes is premature until the completion of OIG’s investigation, why is awarding additional grant monies, of which “What’s Upstream” is potentially eligible, not premature?
 - c. Do you feel making grant awards without prohibitions excluding “What’s Upstream’s” eligibility prior to the completion of the OIG investigation, reflects the, “tone and interest of EPA in collaborating with agriculture on these issues?”

Please provide the requested information and documents on, or no later than, December 30, 2016. If you or your staff require any additional information or clarification pertaining to any of these questions, please do not hesitate to reach out to Kyle Kunkler in my office.

Thank you for your prompt attention to this very important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Newhouse". The signature is fluid and cursive, with a large initial "D" and a stylized "N".

Dan Newhouse
Member of Congress

CC: Dennis McLerran, Administrator, EPA Region 10
Evelyn Fielding Lopez, Executive Director, Washington State Public Disclosure Commission

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
- 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@skagitcoop.org

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 an 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:

- The scenic appearance of Puget Sound, rivers and lakes hides a growing and dangerous water quality problem.
- That problem represents a threat to the health, safety and economic well-being of future generations of Washingtonians.
- 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:** 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
2. **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 Cladoosby in the Skagit Valley Herald and/or the Seattle Times.
Cost: \$10,000
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: \$10,000
4. **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

5. **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
6. **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

c. Project Timeline – Year 4:

May 2015 – January 2016

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:

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

	<u>Task 1</u>	<u>Task 2</u>	<u>Task 3</u>	<u>Total</u>
<u>Salaries</u>				
<u>Fringe Benefits</u>				
<u>Travel</u>				\$
<u>Supplies</u>				2200
<u>Communications/</u> <u>Utilities</u>				
<u>Equipment/Vehicle</u> <u>Rental</u>				
<u>Equipment/ Vehicle</u> <u>O&M</u>				
<u>Sub-Contracts</u>				
<u>Capitalized Equipment</u>				
<u>Professional Services</u>	\$10,000	\$77,450	\$5000	\$92,450
<u>Other</u> <u>(training)</u>				
<u>Total of Direct Costs</u>	10,000	77,450	5000	\$92,450
<u>Indirect Costs</u>				0
<u>Grand Total</u>	10,000	\$ 77,450	5000	\$ 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 Puget Sound Financial and Ecosystem Accounting Tracking System (FEATS) v. September 2012 for Lead Organization Subawardees

Photo by Rebecca Pirtle, Editor, Kingston Community News (Doe-Kag-Wats Estuary of the Suquamish Tribe)

PROJECT INFORMATION

1. Federal Grant Number	PA-00J322-01	*2a. Reporting Period Start Date:	10/1/2014	*2b. Reporting Period End Date:	3/31/2015
3. Subaward Organization (Name and complete address including zip code) Name: Swinomish Indian Tribe Address 1: 11430 Moorage Way Address 2: City: La Conner State: WA Zip Code: 98257-		4. Subaward Project Manager Contact Information Name: Larry Wasserman Phone: (360) 466-7250 Ext: Fax: (360) 466-4047 Email: lwasserman@swinomish.nsn.us			
5a. EPA Program LO - Tribal	5b. Subaward Project Title and Contract No. Coast Salish Tribal Journey Water Quality Project (TJWQP); Non-Point Pollution Public Information and Education Initiative - Year 4 / 13EPA PSP 438	*6. Collaborating Organizations/Partners U.S. Geological Survey and Squaxin Island, Nisqually, and Swinomish canoe families			

Subawardee Submission Instructions: LO fills in the white boxes. Subawardee fills in the yellow boxes (boxes with asterisks). Refer to guidance document for how to fill out the boxes. After filling out the yellow boxes, save and e-mail it to your LO Project Manager for approval. LO will roll up the information and submit to EPA for approval.	LO Project Manager: Tiffany Waters LO: Northwest Indian Fisheries Commission Phone: 360.528.4318 email: twaters@nwifc.org EPA Project Officer: Lisa Chang	*7a. Name/Title of Person Submitting Report Larry Wasserman Environmental Policy Director	*7b. Date Report Submitted 4/23/2015
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FUNDING/COST ANALYSIS

8a. Total Assistance Amount Awarded:	\$166,100.00	8b. Funding Year (Federal Fiscal Year Funds Appropriated)	FY 2013 ----- ----- -----	*9. Amount Spent To-Date:	\$26,480.94	*10. Amount Reimbursed To-Date:	\$25,397.00
11. Match Amount Required	\$0.00	*12. Total Match Amount Spent and Documented To-Date:		*13. Have you experienced any cost overruns or high unit costs?	No, we have not had any cost overruns.		
*14. What issues or questions do you need the LO Project Manager to respond to?							

BUDGET UPDATE

	15a. APPROVED BUDGET			*15b. SPENT TO-DATE		
	LO (EPA) Funds	MATCH	TOTAL	LO (EPA) Funds	MATCH	TOTAL
Personnel	\$24,350.00	\$0.00	\$24,350.00	\$16,882.06		\$16,882.06
Fringe Benefits	\$13,149.00	\$0.00	\$13,149.00	\$9,508.88		\$9,508.88
Travel	\$2,497.00	\$0.00	\$2,497.00	\$1,607.98		\$1,607.98
Equipment	\$0.00	\$0.00	\$ 0.00	\$0.00		\$ 0.00
Supplies	\$2,363.00	\$0.00	\$2,363.00	\$70.00		\$ 70.00
Contracts	\$123,000.00	\$0.00	\$123,000.00	\$0.00		\$ 0.00
Other	\$0.00	\$0.00	\$ 0.00	\$0.00		\$ 0.00
TOTAL DIRECT CHARGES	\$165,359.00	\$0.00	\$165,359.00	\$26,460.94	\$0.00	\$26,460.94
Indirect Charges	\$741.00	\$0.00	\$ 741.00	\$20.00		\$ 20.00
TOTAL	\$166,100.00	(\$0.00)	\$166,100.00	\$26,480.94		\$26,480.94
*Explain Any Discrepancies:						

ECOSYSTEM GOALS ADDRESSED

16a. Primary Goal	Water Quality
16b. Additional Goals	Healthy Species

DIRECT THREATS ADDRESSED

17a. Primary Threat	
17b. Secondary Threat(s)	Agriculture/Livestock Surface Water Loading/Runoff from the Built Env

LINKAGES TO PUGET SOUND ACTION AGENDA (Version Adopted August 2012)

18a. Primary Strategic Initiative	Tribal Habitat Priorities						
18b. Sub-Strategies Employed	B.1	C.1	D.5	A.1	A.6	A.7	
18c. Near-Term Actions Supported							

LINKAGES TO EPA PUGET SOUND PERFORMANCE MEASURES

19. Measure(s)	Habitat Restored/Protected
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LINKAGES TO PUGET SOUND DASHBOARD INDICATORS

20a. Primary Indicator	
20b. Secondary Indicators	Marine Water Quality Freshwater Quality

PROJECT LOCATION

21a. Latitude	48.382773	21b. Longitude	-122.501476
21c. Hydrologic Unit Code	17110007 - Lower Skagit		
21d. Action Area	Whidbey		

MEASURES OF SUCCESS (Key Outputs)

*22a. Description (e.g., “shellfish beds reopened”)	*22b. Unit (e.g., “acres”)	*22c. Project Target (“number”)	*22d. Project Measure To-Date (“number”)
Tribal Journey Water Quality Project will meet with Coast Salish Gathering leadership, Canoe Families, Tribal and non-Tribal scientists from Washington and British Columbia to develop a strategic plan for the Project.	Meetings	12	8
Coordinate with canoe families to conduct the water-quality survey along multiple routes during the 2014 Tribal Journey to Bella Bella	Routes	2	1
Collect water-property data along the proposed routes with canoe families	Samples	25000	13667

PROJECT MILESTONES

Instructions: In the tables below, please explain your progress toward meeting agreed outputs for the period, **reasons for slippages**, and any additional information including **reflections, lessons learned, and/or thoughtful analysis**. When appropriate, include analysis and information of **cost overruns or high unit costs**, and changes to work plan or budget not requiring prior approval from EPA. We encourage photo documentation - please attach to the report as a separate document.

<u>23a. Subaward Work Plan Component/Task:</u> Coast Salish Tribal Journey Water Quality Project (TJWQP)					
<u>23b. 2012 Action Agenda Near-Term Action(s) Supported:</u>					
*23c. Estimated Costs: \$39,996.00					
Actual Costs to Date: \$26,480.94					
(If required to report – contact your Project Manager)					
23d. Sub-Task No.	23e. Sub-Task Description (include due date)	*23f. Date of Status	*23g. Status	23h. Outputs/Deliverables	*23i. Remarks
1.1	Engage in project planning and coordination, including development of QAPP addendum.	3/31/2015	CURRENT	Funding secured and managed; Approved QAPP Addendum; Monthly Canoe Journey meetings; Instrumentation and supplies secured;	The QAPP Addendum has been approved for the 2014 monitoring. As predicted, due to the length of the Journey to Bella Bella, there was considerably more logistical issues in regards to solidifying monitoring routes. Planning is

				Technicians/volunteers recruited	currently underway for smaller sampling events with Canoe Families as there is no official host for the 2015 Tribal Journey
1.2	Gather water-quality data across the Salish Sea to quantify variability, detect changes and trends, and identify impaired water bodies (primarily during the summer Tribal Journey)	3/31/2015	COMPLETED	Instrument packages assembled and delivered to technicians/volunteers; Operation of equipment and collection of data; Coordinator provides assistance provided for technicians on each of routes and ensures that quality control procedures are implemented	Monitoring during the 2014 Tribal Journey to Bella Bella occurred June 23 to June 30, 2014. Due to logistical difficulties with the participating Canoe Families, Squaxin Island volunteered last minute to conduct the study starting in Victoria BC through to Comox BC on Vancouver Island.
1.3	Analyze data and synthesize results of TJWQP data results into maps, GIS data layers, and reports for public dissemination	3/31/2015	COMPLETED	Data entry completed; Data analysis; GIS data layers; Additional analyses with USGS scientists; Maintenance of web-based data query system to facilitate dissemination of TJWQP data to Tribes, First Nations, and other interested agencies or academic institutions; Final report detailing results of the 2014 Tribal Journey Water Quality Project – Journey to Bella Bella findings	2014 data has been processed (first round) and is available online at www.usgs.gov/coastalish . Western Washington University has helped provide a new mapping tool for the TJWQP data.
1.4	Continue to develop the TJWQP outreach materials and strategic plan	3/31/2015	CURRENT	Web-based outreach materials with project data, accomplishments, publications, and contributions to Salish Sea science; Reporting to Tribal/First Nation communities on project findings and accomplishments;	Staff are currently working on creating a new website for the project on the Coast Salish Gathering site (www.coastsalishgathering.com). The next Coast Salish Gathering will be in May 2015 and a project update will be presented to the collective leadership at that time. The project was contacted by

				Presentation at 2014 Coast Salish Gathering; Semi-annual project review with TJWQP partners	representatives from NANOOS and the West Coast Governors Alliance on Ocean Health regarding interest in facilitating on-line data visualization through their websites. Plans are still being developed to host the data visualization on the Coast Salish Gathering and YRITWC sites.

<u>23a. Subaward Work Plan Component/Task:</u> Swinomish Indian Tribal Community Non-Point Pollution Public Information and Education Initiative – Year 3					
<u>23b. 2012 Action Agenda Near-Term Action(s) Supported:</u>					
<u>*23c. Estimated Costs:</u> <u>Actual Costs to Date:</u> (If required to report – contact your Project Manager)					
23d. Sub-Task No.	23e. Sub-Task Description (include due date)	*23f. Date of Status	*23g. Status	23h. Outputs/Deliverables	*23i. Remarks
1.1	Engage with partners to strengthen coalition for advancement of new regulations to provide adequate protection along salmon streams to meet water quality standards and restore salmon		PLANNED	15 meetings between Strategies 360, Swinomish, and coalition partners A strategic advertising plan will be developed to reach a targeted audience both to raise awareness of the issue and build public support for a regulatory remedy; online ads will continue running; Digital copies and/or transcripts of ads	
1.2	Update and continue online and radio ads		PLANNED		
1.3	Engage in ongoing maintenance for the website that was developed in Year 3 to provide public information regarding the need for adequate riparian buffers on agricultural lands		PLANNED	Website available for viewing and the target of social media and online advertising efforts to direct the	

				public to an education site to learn about the impacts of agricultural practices and water pollution	

CHALLENGES AND SOLUTIONS (specific to reporting period)

*24a. Task No., Sub-Task No.	*24b. Challenge	*24c. Solution

HIGHLIGHTS/LESSONS LEARNED/REFLECTIONS

<p>*25.</p> <p>As a result of ongoing discussions with the media firm we are using, we are developing a more refined outreach program. Because we were transitioning from a very focused element of water quality issues to a broader message, we did not want to expend funds until the approach, audience, and message were more fully developed. An increased expenditure of funds will begin in mid-May with a focus on north Puget Sound.</p>

Chang, Lisa

From: Chang, Lisa
Sent: Tuesday, May 19, 2015 5:06 PM
To: 'Tiffany Waters'; 'Scott Williamson'
Cc: Bonifacino, Gina; Bonifaci, Angela
Subject: RE: Swinomish FY14 Proposal

Hi Tiffany,

Thanks for the opportunity to review this proposal. Below is some initial feedback, as discussed on the phone today.

Here is an initial comment:

- 1) The proposal cites the following passage from the Skagit Chinook Recovery Plan (SCRП):

“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. “

To me this suggests a public education effort that reaches and educates not only the general public, but all those “working in and around streams” – the agricultural sector as well. It suggests that the aspiration is a collaborative effort, where those “working in and around streams” and the general public are aware of, and have the tools to, protect and restore salmon habitat.

- 2) However, on pp. 5-6, the workplan suggests that the proposed outreach/education work has shifted away from the approach that seems to be laid out in the SCRП and no longer involves engaging/educating all those who “work in and around streams”: The current goal of the proposed work is to “raise awareness in both the public and decision makers about accountability in the agriculture industry where non-point source pollution and our state’s water resources are concerned...” and this would be done through “highly visible distribution channels...earned media stories in relevant print, television, radio and online channels...18 ads in Washington newspapers...and 4 billboard displays in King, Skagit, and Whatcom counties.”

We would like to further discuss the shift in emphasis between the original narrative and it’s solid basis in the SCRП and the actual direction of this project as we understand it from today’s conversations and the FY14 proposal and would appreciate it if we could have a conversation with NWIFC and the subawardee before work proceeds much further.

Thanks very much,

Lisa

From: Tiffany Waters [mailto:twaters@nwifc.org]
Sent: Wednesday, May 06, 2015 10:19 AM

To: Chang, Lisa; Scott Williamson
Subject: Swinomish FY14 Proposal

Hello Lisa and Scott,

Enclosed is Swinomish's second FY14 proposal for your review. If you have any questions, please don't hesitate to call or email.

Thanks!
Tiffany

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

From: Chang, Lisa
To: Fournier, Tony
Subject: RE: Cost principles?
Date: Wednesday, July 01, 2015 1:27:00 PM
Importance: High

Hi Tony,

Thanks so much for your time and thoughtful response. I do have 2 follow-up questions:

- 1) The UGG refers to 2 distinct types of activities – “public relations” (as in the paragraph you quote) and “advertising.” If we could definitively construe the subawardee’s activities as “public relations,” as opposed to “advertising,” then I completely agree with you that Swinomish’s proposed work is not consistent with the UGG language regarding public relations. However, if the proposed work could be considered “advertising,” the UGG does not require that the advertising be to support favorable relationships and broad understanding of the public at large. Advertising can simply be to meet the requirements of the Federal award. I don’t know that we could definitively say that what Swinomish is proposing is clearly PR vs. advertising, and therefore I’m concerned that we can’t use the UGG as a basis for holding that NWIFC should disallow those costs.
- 2) The training language you cite regarding lack of privity with the subawardee makes me think that our “substantial involvement” T&C, which allows us to “review and approve” outputs and deliverables of the award, does NOT allow us to similarly “review and approve” outputs and deliverables of subawards. Would you agree with that understanding?

Thanks for everything, but I’m feeling like I’m on squishy ground...

Lisa

From: Fournier, Tony
Sent: Wednesday, July 01, 2015 9:23 AM
To: Chang, Lisa
Subject: RE: Cost principles?

Hi Lisa,

Let me first frame my response from a statement in our advanced cost principles training: “Because the pass through entity is the direct recipient of the federal funds, it is accountable to the federal awarding agency, even for funds it subawards. Therefore, while the federal agency awards the funds and monitors the pass-through entity, the pass-through entity subawards the funds and monitors its subrecipients’ use of those funds to ensure that project objectives and compliance requirements are met and funds are expended appropriately.”

Since we do not have contractual privity with a primary recipient’s subrecipient, we cannot necessarily disallow a cost directly from the subawardee; however, we can hold the primary

recipient accountable to the program objectives, terms and conditions, and expenditures related to carrying out those objectives. In other words, if we determine that a particular activity and/or expense is unallowable, we can recover the costs directly from the primary recipient.

Objectively, I think you can reasonably interpret "required" to include all aspects of the approved federal award, i.e., approved workplan activities, related expenditures, specific terms and conditions, etc. The main thing is to keep the main thing the main thing...we award federal funds to carry out the objectives of a program for the benefit of the "public".

Again, in relationship to this particular media campaign, I think you need to pay close attention to the UGG language:

(c) The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

I personally think their approach/messaging violates both the letter and intent of this principle.

Tony Fournier

Acting Manager

U.S. EPA Region 10, M/S OMP-173
Grants and Interagency Agreements Unit
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Tel: 206-553-1838
Fax: 206-553-4957

From: Chang, Lisa

Sent: Tuesday, June 30, 2015 2:35 PM

To: Fournier, Tony

Subject: Cost principles?

Hi Tony,

Following up on our conversation about our authority to intervene on an NWIFC subaward, you had mentioned something about looking at the cost principles, specifically regarding advertising.

I looked at that section of the omniscircular (pasted below), and have a question.

In the yellow-highlighted sections below, what does it mean "required by the Federal award" – does it mean that if an output is identified in the approved award or subaward, then that output becomes a "requirement of the Federal award"? Or, does a requirement of the Federal award refer only to the award T&C?

Can you please clarify? Because if it is the latter, then I think the costs for Swinomish's media campaign may not be allowable under the cost principles.

Lisa

§200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

- (1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also §200.463 Recruiting costs);
- (2) The procurement of goods and services for the performance of a Federal award;
- (3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or
- (4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

(c) The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

- (1) Costs specifically required by the Federal award;
- (2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or
- (3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also §200.432 Conferences), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

From: Chang, Lisa
To: Bonifaci, Angela
Cc: Chang, Lisa
Subject: Some notes from today's call with Larry, 6/26/15
Date: Friday, June 26, 2015 1:44:32 PM

Participants: Larry, Angela, Tiffany, Fran, Lisa

- Section 320 is authority under which we grant these funds. NEP forum is supposed to be collaborative..
- Our counsel has advised us that we do have a regulatory mechanism...we don't want to go there
- We'd like to work together, provide resources, work through MC
- We're hoping we can discuss this together.
- What are you trying to get out of this project, are you open to exploring different approaches?
- Larry
 - What we are proposing isn't different from what we have been doing for past 5 years
 - SCRP – aspirations include amend CWA to deal with non-point issues, regulations associated with riparian buffers.
 - Tribe has been engaged for 25 years in many forums to implement these things. Unsuccessful. TRAR comes from lack of ability to move ball forward.
 - This proposal is framework to educate the public re: need to regulate agriculture.
- Fran: 3, 5, 7 Directors' talk – has to be viewed as part of that 25 years of effort that did not resolve anything. Never any follow-through on the Directors' talks. Maia now working to improve communication between ECY and agriculture but not being able to advance water quality issues.
- Larry – meeting in Cle Elum; Rick was there, 38-39 CDs there; all opposed. Larry stood up and expressed tribal concerns. Had that discussion numerous places and with numerous people.
- Our intent is to inform the public on the need to regulate. How would you suggest we engage the agriculture community? Does EPA want to influence the tone and message that the tribe wants to put out there? I didn't envision that this contract with NWIFC would ultimately land in EPA trying to play a fairly strong role in influencing the message. Even if the tone is changed, would still like to understand with some clarity what you would do to inform the public on the need for regulation on non-point issues.
- Press folks with expertise with messaging to the general public, open to, but not tweaking the message to not alienate the farm community
- EPA and ECY doing the right thing with standards; if your concern is that this may disrupt riparian initiative – that is another discussion; that discussion is identical to the discussion we've had over the last 25 years. If you're concerned about that effort, there's a bigger discussion to be had.
- Don't actually have product, will be another few months before we have project to share.
- Next step – Chairman Cladoosby, Mike Grayum, anyone who needs to be there from EPA
- Fran – I'd like for us to think about what the parameters are for carrying out our task – NWIFC moving funds to tribes. EPA find specific information that provides parameters for

NWIFC to move the money forward. Angela – we should set up a separate conversation with NWIFC about that. EPA is in difficult spot. You are hearing from Larry/Tribe – this money is theirs too. If they can't carry out what is their objective, then that weakens the whole partnership. There are components of agriculture that are not part of the problem.

- Larry – if the intent is to educate the public at large on the impacts of agriculture on water quality. There are a number of farmers doing the right thing, too few farmers despite a multitude of programs. Programmatically not enough. Public willing to spend more for food.
- Fran – where progress has been made, what balance means. Very important part of the conversation. But right now, we need to make a decision on this contract. Timber industry example. Step back and see where we are. Fran would like to have broader discussion – we could be better partners. We are missing opportunities of the energy people are bringing forward.
- Set up discussion for next week between NWIFC and EPA re: parameters NWIFC needs to follow when moving the money.

Chang, Lisa

From: Chang, Lisa
Sent: Thursday, July 16, 2015 12:17 PM
To: Bonifaci, Angela
Subject: RE: Call between Dennis, Larry W and Larry's attorney today
Importance: High

Angela –

This is not directly related, but of interest: Gina just told me during our monthly PSTCP meeting that on Larry's capacity grant, Yvette identified a conflict of interest issue (Swinomish is using capacity funds to support a contractor, Skagit Climate Consortium, which Larry sits on (as a technical committee member). There is an appearance of conflict of interest so Yvette and Gina have asked Larry to clarify his activities, as well as to make a COI statement. I think this is a very recent development and is being worked now. Also under the new capacity award, Swinomish is including an education and outreach component.

I am concerned that you and Dennis are going into this call with Larry and a Swinomish attorney with no ORC or GIAU support. It seems to be a vulnerable position for EPA to be in to be speaking to Swinomish counsel without EPA counsel on hand.

Dan relied on the "substantial involvement" T&C and other grant policies for our oversight authority on the Swinomish subaward. He was willing to say that EPA couldn't allow the work to go forward without further discussion/involvement on the basis of what we have seen of the project to date. Given the buzz we have been hearing about (including what I heard from Skagit Watershed Council and PSP place-based staff), I think we have grounds to be concerned that the grant activities could fracture, rather than encourage collaboration, among key Management Conference interests.

Lisa

From: Bonifaci, Angela
Sent: Thursday, July 16, 2015 11:43 AM
To: Chang, Lisa
Subject: Call between Dennis, Larry W and Larry's attorney today
Importance: High

Hey Lisa,

I just wanted to keep you in the loop as this conversation unfolds.

Larry has asked to talk with Dennis at 12:30pm this afternoon. One of Larry's attorneys will also be on the call.

Dennis has asked that I call in.

Is there anything more that I should know going into this?

Thanks!
Angela

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**Senior Managers Schedules**

Dennis J. McLerran
Regional Administrator, US EPA Region 10
Working Schedule for: 07/16/2015

TIME	EVENT
12:30-1:00pm	Call with Larry Wasserman and Nate Cushman Swinomish Tribes Closed Press
1:00-2:00pm	Call with State Environmental and Agriculture Department Leaders, including: Maia Bellon, Washington State Department of Ecology Derek Sandison, Washington State Department of Agriculture Dick Pedersen, Oregon Department of Environmental Quality Katy Coba, Oregon Department of Agriculture John Tippetts, Idaho Department of Environmental Quality Celia Gould, Idaho Department of Agriculture Closed Press

Chang, Lisa

From: Chang, Lisa
Sent: Thursday, July 16, 2015 2:19 PM
To: Bonifaci, Angela
Subject: RE: Notes from call with Larry W.

Hi Angela,

I would love to debrief with you on the conversation. It sounds like Larry was extremely adversarial and challenging; I am having a hard time processing the conversation. It would be very helpful to talk about next steps and prep for meeting with Larry, and who to involve.

Lisa

From: Bonifaci, Angela
Sent: Thursday, July 16, 2015 1:22 PM
To: Opalski, Dan; Chang, Lisa
Subject: Notes from call with Larry W.

FYI...

Larry started off by asking Dennis how invested he was in the discussion on this issue, or should it be elevated?

Dennis emphasized that we believe this to be a policy issue, and not a legal issue.

Larry asked to hear from Dennis about his concerns.

Dennis - as he understands it, we have funded a website and now the Swinomish wish to expand the campaign to include other types of media. He has concerns about the use of NEP funds, and explained that we have to work with all of our partners, and can't take sides. Need to work with all stakeholders. The potential content is really driving our concerns. If the plan is to provide factual information, that is ok. But this seems a bit more confrontational.

Dennis asked me to add at this point and I reiterated the objective of an NEP management conference is to be collaborative, inclusive, and consensus based. I also spoke about the use of NEP funds vs. the use of their own funds for this type of thing. And also how this is all still very abstract, and that we could work together on the messaging to achieve desired outcomes.

Larry - been working on these issues for two decades. The Ag community is unresponsive. Need to reach out to unaffiliated public in order to educate them on the lack of regulations and the effect on water quality. Do not intend to reach out to the Ag community. Really want to do something "edgy" to drive the public to their website, which has been funded with \$500k of EPA money to-date. The grant was always headed in this direction, and was approved. He is happy to share documents with us, but emphasized that they are not doing anything different than what they said they were going to do. Including the increased use of media. He doesn't believe that this is something that EPA can choose to approve or not approve at this point.

Dennis - I hear what you are saying. Wants to seek middle ground and work together on the messaging.

Larry - Will provide a disclaimer on all products that while this is funded by EPA, it does not necessarily reflect our views. Spoke about the ongoing contract and the time issue. Need to figure this out quickly. There are no products to share at this point other than the website, which is about 80% complete. CWA does not have a good mechanism to deal with nonpoint Ag pollution. The messaging will be hard hitting. Suggested giving them 2 weeks to work with the folks developing the messaging in order to refine and draft final product and see if we can come to an agreement.

Dennis - suggests a hybrid where Larry can meet with Angela and Dan, and Marty (from the company that is working on this) earlier.

Larry - What he is hearing from EPA about protecting the "Big Tent" is not what they signed up for. He doesn't believe that we can legally stop them from using this money, since the project has been approved and moving forward for the past 5 years. What EPA is saying about how the Swinomish can or cannot be spent is not reflected in the contract.

Dennis - We hear your concerns. Let's try and reach a middle ground.

Larry - Asks us to think about getting a message out to the public about shortcomings in the regulation of the Ag industry leading to not meeting the CWA.

Dennis - Let's work together on the messaging. For example, we all love ice cream but don't like cows in the stream.

Larry - Will set up a meeting with Dan and Angela for next week.

Angela - I can help with that and include Lisa Chang and possible Jeff Philip.

--
Angela Bonifaci | Acting Program Manager
EPA Puget Sound National Estuary Program
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Chang, Lisa

From: Chang, Lisa
Sent: Tuesday, June 23, 2015 3:54 PM
To: Castanon, Lisa
Cc: Bonifaci, Angela; Fournier, Tony
Subject: Question about authority to intervene on LO subaward funding decision
Importance: High

Hi Lisa,

Are you still the correct ORC contact for grants questions? The Puget Sound program has had some discussion with the Grants program (Tony Fournier) and he has suggested bringing ORC into this discussion. An overview of the issue is in the message below. We are scheduled to discuss this issue with the grantee and its subawardee on Friday.

If you are the right ORC attorney, would you be available to talk with me about this issue on Wednesday, Thursday, or Friday (Friday morning only) of this week?

Lisa

Lisa H. Chang, Ph.D. | **Puget Sound Team**
U.S. Environmental Protection Agency, Region 10
Office: (206) 553-0226

From: Chang, Lisa
Sent: Tuesday, June 02, 2015 11:12 AM
To: Fournier, Tony
Cc: Opalski, Dan; Downs, Yvette; Bonifaci, Angela; Bonifacino, Gina
Subject: Question about authority to intervene on LO subaward funding decision
Importance: High

Hi Tony,

To follow up on our hallway discussion when I bumped into you up here a few minutes ago, we'd like to know what our authority is to intervene on an LO funding decision. Here is the situation:

- Under its cooperative agreement with us, the NWIFC LO annually requests proposals from Puget Sound tribes and tribal consortia for projects to protect and restore Puget Sound.
- In 2014, as in other years, NWIFC issued its annual RFP, which includes the following statement of purpose (my emphasis):

"The purpose is to provide sub-awards to 19 Federally-recognized Indian Tribes located within the greater Puget Sound Basin, and any authorized consortium of these eligible Tribes, to implement projects that are of high Tribal priority and that are identified in or consistent with the Action Agenda, such as activities in existing recovery plans, which will contribute directly to the restoration and protection of Puget Sound. Types of activities to be funded under the subaward process set up under this Cooperative Agreement can encompass any work for which there is a strong, well-documented and supported need within the framework of Puget Sound protection and restoration efforts..."
- The Swinomish Tribe has submitted a proposal for funding under this 2014 RFP; this project is the continuation of a project that has been funded for the past several years under the NWIFC LO program. Briefly, the purpose

of the project is 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."

- We have reviewed and commented on the project in previous years. We have expressed concern with other aspects of the proposal in the past, but the subawardee has addressed the concerns and the project has proceeded.
- However, with the proposal for 2014 funds, in conjunction with reviewing some of the products produced in earlier years of the award, EPA staff now believe that the proposed work does not meet the stated purpose of the RFP and may even undermine it. Specifically, we believe that the project as actually implemented is not "consistent with the Action Agenda" and can no longer demonstrate "a strong, well-documented and supported need within the framework of Puget Sound protection and restoration efforts."
- **Our question to you is this: what is EPA's authority to direct the NWIFC LO not to fund this proposal, or to require significant changes to the proposal, or to terminate the project, in light of the direction this project has taken?**

Many thanks for any regulatory or policy citations you can point us to,

Lisa