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January 4, 2017

(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 –
Response to EPA December 22, 2016, Letter on Behalf of McLerran
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. This letter is in partial response to the letter dated December 22, 2016, from the EPA Office of Regional Counsel on behalf of McLerran and to provide additional documents in support of the complaint that were released by EPA on December 23, 2016, as part of the ongoing and wrongfully delayed response to a Freedom of Information Act request from Save Family Farming.

A. The EPA Office of Regional Counsel misrepresents the law on sovereign immunity as applied to federal officials.

The Save Family Farming complaint is against McLerran, as well as Wasserman, in their individual capacity. The complaint does not implicate sovereign immunity because it does not operate against a sovereign. We are not asking that the Public Disclosure Commission find that the EPA or the Swinomish violated state law. We are asking that the Commission sanction both McLerran and Wasserman in their individual capacity and thereby make clear to all officials of the EPA and Tribes in Washington that they are personally

responsible for violations of state lobbying and campaign registration and reporting requirements. Wasserman and McLerran are asking no less of the Commission than a green light to spend whatever amount of money they want to contact and influence the state Legislature with impunity and without any accountability to the people of the state of Washington or its laws.

EPA erroneously represents that McLerran is absolved of the violations of state law because he was “acting in his official capacity.” It is highly doubtful that the United States of America would ever defend this legal position. McLerran has no more right to sovereign immunity if he assaulted another individual in the course of an agency meeting than he has if he conspired and directed at an agency meeting for EPA to continue funding and cooperating with Wasserman on an unregistered grass roots lobbying campaign that violates the law in the State of Washington.

The actual position of the United States government on this point was made clear in a November 14, 2016, brief by the Acting Solicitor General of the United States to the U.S. Supreme court in the matter *Lewis v. Clarke*, No. 15-1500. In that brief the Solicitor General makes clear that whether “sovereign immunity bars such an action depends on whether plaintiff seeks relief from that individual in his official capacity or his personal capacity.” *Id.*, Brief for the United States as Amicus Curiae Supporting Reversal, 2016 WL 7030496, at *9 (November 21, 2016) (*citing Hafer v. Melo*, 502 U.S. 21, 25 (1991); *Kentucky v. Graham*, 473 U.S. 159, 166 (1985)). Per the Solicitor General, “A suit against an officer or employee is an official-capacity suit if the plaintiff ‘must look to the government entity’ for relief.” *Id.*, *citing Graham*, at 166. The Solicitor General explained:

Personal-capacity suits, on the other hand, seek to impose *personal* liability on government officers and employees for actions taken in the course of their government duties. *Graham*, 473 U.S. at 165; see *Scheuer v. Rhodes*, 416 U.S. 232, 237-238 (1974), abrogated on other grounds by *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). The operative question in determining whether a suit is against a government officer or employee in his official capacity is whether the suit seeks relief that operates against the agent’s personal interests (such as payment of damages from his own assets) – not whether the suit challenges actions the agent took in the course of his or her official duties. *Hafer*, 502 U.S. at 26-27; see *Graham*, 473 U.S. at 165-166.

Such suits seeking to recover damages from the officer or employee personally are not considered suits against the sovereign, even though they arise out of the agent’s work for the sovereign and they therefore are not barred by sovereign immunity. As this Court as explained, **if the “wrongful actions” of [g]overnment officers” are “such as to create personal liability, whether sounding in tort or in contract, the fact that the officer is an instrumentality of the sovereign does not, of course, forbid a court from**

taking jurisdiction over a suit against him.” *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 686 (1949). Thus “[i]n a suit against the officer to recover damages for the agent’s personal actions” in the performance of his duties, the “question is easily answered” that the suit is not against the government and is not barred by sovereign immunity. *Id.* at 687; accord, *e.g.*, *Hafer*, 502 U.S. at 30; *Ford Motor Co.*, 323 U.S. at 462. That rule has been applied to federal and state employees alike. See, *e.g.*, *Larson*, 337 U.S. at 687-688 (federal official); *Hafer*, 502 U.S. at 26-27 (state official).

Id., *10-11 (emphasis added).

These principles apply equally to the claim of sovereign immunity asserted by Wasserman in this matter. *Lewis v. Clarke* is pending before the U.S. Supreme Court on an appeal from a ruling by the Connecticut Supreme Court. The Connecticut court ruled that the doctrine of sovereign immunity applies to a claim against a tribal employee for damages arising out of an automobile accident. The Solicitor General has urged the U.S. Supreme Court to reverse and remand the matter consistent with long-standing federal law:

Tribal sovereign immunity arises from the same principles that underlie federal and state sovereign immunity. The Court should therefore apply the analysis described above to determine whether a suit against a tribal employee is an official-capacity suit that must be treated as a suit against the Indian tribe, or instead is a personal-capacity suit against the tribal employee.

Id., at *12.

The Commission should accordingly disregard the demands from the EPA Office of Regional Counsel to dismiss this matter on the basis that “McLerran was acting in his official capacity” or that the Commission “lacks jurisdiction over McLerran’s official actions.” The question is whether McLerran has responsibility for funding and directing a grassroots lobbying campaign subject to the regulatory authority of the Commission regardless of whether his actions were in his official capacity.

On that essential question, there is little doubt that McLerran violated state law and that he should be held personally accountable for those violations. It was common knowledge within the EPA Region 10 office as early as December 2013 that the What’s Upstream campaign was intended to engage in state lobbying. In an email exchange between Tiffany Waters of the Northwest Indian Fisheries Commission (NWIFC) and Lisa Chang at EPA Region 10, Ms. Waters states that the campaign is not prohibited from using federal funds for lobbying representatives of the State of Washington. See Exhibit A (email from Waters to Chang, December 18, 2013). Ms. Chang responds “[t]hat is a great point (limited to State lobbying) that was critical when the attorneys reviewed it the first time.” *Id.*, (email from Chang to Waters, December 18, 2013).

EPA staff nonetheless objected to and suspended the What's Upstream campaign on May 19, 2015, on the basis of the clear direction of the campaign to influence the state legislature – although the staff concern was apparently not on lobbying but on actions contrary to the principles of cooperation and collaboration under the Puget Sound Action Plan. Exhibit C to Save Family Farming previous letter to the Commission (email from L. Chang to T. Waters, May 19, 2015).

It is reasonable to infer that McLerran's meeting with Wasserman on July 16, 2015, was to overrule the EPA staff. It is also reasonable to infer that but for the intervention of McLerran on July 16, 2015, that there would have been no follow up meeting with EPA management and staff to assist in the development and funding of the grassroots lobbying effort. There is little question that McLerran knew the objectives of the campaign at the meeting on July 16, 2016, that he personally intervened to authorize and direct the continued involvement of EPA in a grassroots campaign. As such, McLerran violated state law by not likewise directing that the campaign register and report as required by state law.

B. McLerran does not deny his misrepresentation to the Commission that EPA attorneys advised him in July 2015 that EPA had no authority to control illegal expenditures by Wasserman.

The December 22, 2016, letter from the EPA Office of Regional Counsel on behalf of McLerran does not substantiate the false and misleading statement by McLerran in his declaration that "EPA legal staff advised me that EPA had very limited authority over a sub-award..." McLerran does not refute the record we submitted in our last letter that EPA staff based on input from Lisa Castanon, who is now the acting Regional Counsel for the EPA Region 10, that EPA in fact had the authority to prevent the use of federal funds for a state grassroots lobbying campaign **before** McLerran met with Wasserman on July 16, 2015.

The recent documents released by EPA to Save Family Farming document that even **after** the McLerran-Wasserman meeting the EPA staff, based on advice of counsel, continued to believe that they had the authority to stop the What's Upstream campaign. *See* Exhibit B (email from L. Chang to A. Bonifaci, August 9, 2015). Under "options" described in this email, Ms. Chang clearly states that one option is "EPA disapproves certain deliverables produced under the grant and disallows further costs on Year 5 workplan."

The Commission should disregard McLerran's testimony regarding the advice he received from "legal staff" as a blatant effort by McLerran to present false information to the Commission in this matter. McLerran does not deny that he had a direct, active and successful role in thwarting EPA staff review and questions about the use of federal funds. The recent assertion by the EPA Office of Regional Counsel that these actions were part of McLerran's official duties does not in any way thwart the Commission from taking action against McLerran for his personal conduct whether or not it was in his official capacity. McLerran is not above the law and is not allowed to direct and approve an expenditure of federal funds that

violate state law - state laws that McLerran was well aware of at the time of his action as a long-time member of the Washington Bar and experience as a city of attorney in the state of Washington.

C. McLerran continues to misrepresent 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.

The recent letter from the EPA Office of Regional Counsel does not refute or explain the blatant misrepresentation by McLerran in his declaration that he was not informed until "the Spring of 2016 that the whatsupstream campaign website and "take action" button had been finalized...and that the agricultural community was upset."

If McLerran did not know about the "take action" button prior to the Spring of 2016, he was likely the only employee at the EPA Region 10 with responsibility for the grant funds who was oblivious to this aspect of the campaign. Lisa Chang advised the EPA Region 10 senior management including Tony Fournier, Angela Bonifaci, Dan Opalski and Assistant Regional Counsel Lisa Castanon of this fact on July 29, 2015. Exhibit C (email from L. Chang July 29, 2015). It is improbable that McLerran did not know at or about the time of this email that intervention on behalf of Wasserman would result in "link...for citizens to generate a letter to their legislator urging regulation of NPS agricultural pollution" as described in the July 29, 2015 email.

Because of the personal actions of McLerran, EPA staff proceeded to review and edit both the website with the "take action" button as well as the draft letter to state legislators that would be generated by the website. Attached as Exhibit D is the August 14, 2016, EPA comments and suggested edits to both the website and draft letter to state legislators. On page 1 of Exhibit D is the opening or home page of the new website with the "take action" button highlighted to show a pull-down menu. The menu includes, "CLICK HERE to tell your legislators it's time for stronger regulations to protect our water." The last page of Exhibit D consists of the "Draft letter to elected officials" with suggested edits by EPA staff. It is improbable that McLerran was not aware of the active involvement of EPA staff to refine and direct the What's Upstream campaign in August 2015 one month after his meeting with Wasserman.

If McLerran was so derelict in his duties and responsibilities to not know what he had authorized in July, he was clearly made aware of the state grassroots lobbying campaign in early December 2015 – months before he claims to have learned about the "take action" button and concerns in the agricultural community as falsely represented in his declaration. EPA recently released additional emails from December 2015 that refute McLerran's false testimony. On December 2, 2015, EPA was advised in an email and telephone call from Wasserman that the revised What's Upstream website with the "take action" button had gone live. Exhibit E (email from L. Chang to G. Bonifacio forwarding a broadcast email from

info@whatsupstream.com.) The broadcast email as previously described to the Commission includes the website launch is “just in time for the start of the 2016 legislative session,” and “[p]lease 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.” Lisa Chang in her email states that she put this information in a “Hot Topic” that she has asked Angela Bonifaci to elevate the matter to McLerran “today.”

In another recently released document EPA has disclosed that McLerran knew as early as December 15, 2015, that the agriculture community was concerned about the What’s Upstream campaign and new website. In an email from Bill Zachmann to Angela Bonifaci and Lisa Chang dated December 15, 2015, Mr. Zachmann, who was then serving as a grants project officer for EPA, details a complaint he received from the Skagit County Public Works Director regarding the campaign and “using federal funds to establish what can be viewed as a lobbying effort.” *See* Exhibit F. Mr. Zachmann states in the email that he was “tossing this as a potential Hot Topic.”

D. The Commission should disregard the statements by Lisa Castanon and Socorro Rodriguez.

Save Family Farming respectfully objects to the representation of McLerran in this matter by attorneys in the EPA Office of Regional Counsel who have personal knowledge of advice given to Mr. McLerran that is material to his personal liability for violations of state law. Lisa Castanon as described above and in our previous letter was the attorney advising EPA staff in the summer of 2015 and who’s advice EPA relied on to conclude that the agency in fact had the authority to suspend the What’s Upstream campaign. Socorro Rodriguez was also involved in an earlier review of the What’s Upstream campaign and assessment of whether the proposed state grassroots lobbying campaign violated federal law. *See* Exhibit G (email from S. Rodriguez to L. Chang January 15, 2014).

Both attorneys are potential witnesses on substantive points raised by McLerran in his declaration to the Commission. The State of Washington Rules of Professional Conduct (RPC 3.7) preclude an attorney from acting as an advocate in a matter in which the lawyer is likely to be a necessary witness. While this rule applies to trials, it raises a substantial ethical concern that two attorneys with personal knowledge of facts that bear on the liability if not credibility of McLerran are representing his position to the Commission.

Save Family Farming appreciates your consideration of this additional information in support of its 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

In trying to better understand the proposal, can you tell me if this is the website being described under Task 3 in the proposal: <http://www.whatsupstream.com/about.html>?

Thanks,

Lisa

From: Tiffany Waters [mailto:twaters@nwifc.org]
Sent: Wednesday, December 18, 2013 3:21 PM
To: Chang, Lisa
Subject: RE: Delay in Swinomish proposal review

Thanks, Lisa! I appreciate you taking the time to get this feedback so that we can be sure that everything is squared away.

From: Chang, Lisa [mailto:Chang.Lisa@epa.gov<mailto:Chang.Lisa@epa.gov>]
Sent: Wednesday, December 18, 2013 2:56 PM
To: Tiffany Waters
Subject: RE: Delay in Swinomish proposal review

Thanks, Tiffany. That is a great point (limited to State lobbying) that was critical when the attorneys reviewed it the first time. I don't really know what the issue is this time – someone else raised it – and we are meeting with someone from our legal staff this afternoon and I will hopefully learn more that I can pass along. I'll specifically ask about the distinction between State and Federal lobbying.

From: Tiffany Waters [mailto:twaters@nwifc.org]
Sent: Wednesday, December 18, 2013 1:28 PM
To: Chang, Lisa
Subject: RE: Delay in Swinomish proposal review

Thanks, Lisa. I figured that this particular review might take a bit longer than usual. Let's definitely talk more about this once your attorneys have had a chance to look at it. From our perspective, Swinomish's work up until this point has been concentrated on education and outreach, not 'lobbying.'

This stated though and in looking forward, in reviewing the anti-lobbying clause and associated certificate that we and our tribes have to sign, I was under the impression that it referred only to a prohibition of the use of EPA funds in lobbying representatives of the federal government, not representatives of the State of Washington. Additionally, an integral part of the Action Agenda is to "Improve, strengthen, and streamline implementation and enforcement of laws, plans, regulations, and permits consistent with protection and recovery targets" (A.1.3).

Once they've had a chance to review the proposal further, let's set a time to talk about this in January.

Thanks!
Tiffany

Tiffany Waters<mailto:twaters@nwifc.org> Puget Sound Recovery Projects Coordinator
6730 Martin Way E., Olympia, WA 98516
(p) 360.528.4318

From: Chang, Lisa [mailto:Chang.Lisa@epa.gov<mailto:Chang.Lisa@epa.gov>]

From: Chang, Lisa
To: Bonifaci, Angela
Cc: Chang, Lisa
Subject: Outline for discussion en route to Swinomish
Date: Sunday, August 09, 2015 10:14:10 PM

Hi Angela,

Hope you had a good weekend. I wanted to get an overall summary to you of where I think we are with respect to Swinomish, and hopefully this outline can help us structure how we brief Dan on the ride up to Swinomish tomorrow morning:

1) Original workplan language. I will bring copies of the original proposed workplan submitted by the Swinomish Tribe in Years 1-5 of the NWIFC LO program. As a reminder, NWIFC requires recipients to submit a proposal for each year of funding, even if it is just an updated version of a proposal submitted in prior year(s) for an ongoing project.

2) Main programmatic concern. The issue we raised in our May 2015 comments on the proposed workplan currently before us for review, in essence, remains our basic concern: that the proposed work (sharpened and amplified media campaign targeting the agriculture sector) veers sharply away from consistency with the Action Agenda. The funding authority for this work is to support implementation of the Action Agenda. In our view the Action Agenda reflects a collaborative approach to addressing issues on working lands.

3) Basis for EPA's authority to disapprove work and disallow costs. Discussions with ORC and GIAU indicate that the "substantial involvement" term and condition in all Puget Sound cooperative agreements enables us to disapprove work produced under an LO subaward, and to disallow further costs associated with the project.

4) Technical review process. NWIFC subawards are subject to a modified peer review requirement, in which subawardees must, for certain kinds of major work products, establish a technical review process. NWIFC has not required Swinomish to establish a technical review process for this subaward, presumably because it did not consider the work products to be "major." However, it could be argued that this subaward generates products intended to give rise to major regulatory and/or policy decisions, and therefore trigger the technical review process requirement. Preliminary review by TMDL program staff indicate there are questions about how TMDL program data are interpreted and presented by the website. Preliminary review by CIPI also indicates more effective public communication and messaging approaches may be available.

5) Engage the Management Conference. The subawardee and lead organization contest EPA's view that the project is no longer consistent with the Action Agenda. The question could be put to Management Conference entities.

6) Options:

- (a) No action; allow NWIFC to approve the proposed workplan and to approve deliverables to date.
- (b) EPA requires that NWIFC convene and oversee a technical review process, with close participation from EPA
- (c) EPA, under the "substantial involvement" T&C, convenes and oversees the technical review process
- (d) PSP leads a Management Conference review of the deliverables to date and the proposed work
- (e) EPA disapproves certain deliverables produced under the grant and disallows further costs on Year 5 workplan.

Exhibit

Chang, Lisa

From: Chang, Lisa
Sent: Wednesday, July 29, 2015 3:16 PM
To: Fournier, Tony; Castanon, Lisa
Cc: Bonifaci, Angela; Opalski, Dan
Subject: Restrictions on lobbying?

Hi Tony and Lisa,

A couple of months ago, I asked you about EPA's authority to intervene in a case where our direct grantee, NWIFC, was in our view allowing a subgrantee to pursue an activity that was contrary to the goals and plan of the program under which it is funded. The activity is a "public education and outreach" campaign aimed at building public support for regulating non-point source agricultural pollution.

We recently learned that the grantee intends to include a link, in the main website that is the centerpiece of its outreach campaign, for citizens to generate a letter to their legislator urging regulation of NPS agricultural pollution.

This appears to be contrary to the spirit of our new grant regulations on lobbying (see yellow-highlighted portion below). However, the highlighted portion below only addresses non-profits and institutes of higher education.

We would like to be able to be clear with NWIFC and its subawardee that the activity they would like to pursue is not allowed under our grant regulations, but again, it seems like the relevant lobbying restrictions only apply to non-profits and IHEs.

Can we presume that the highlighted activities should also not be pursued by NWIFC or its subawardee?

Lisa

§200.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Governmentwide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

(b) Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

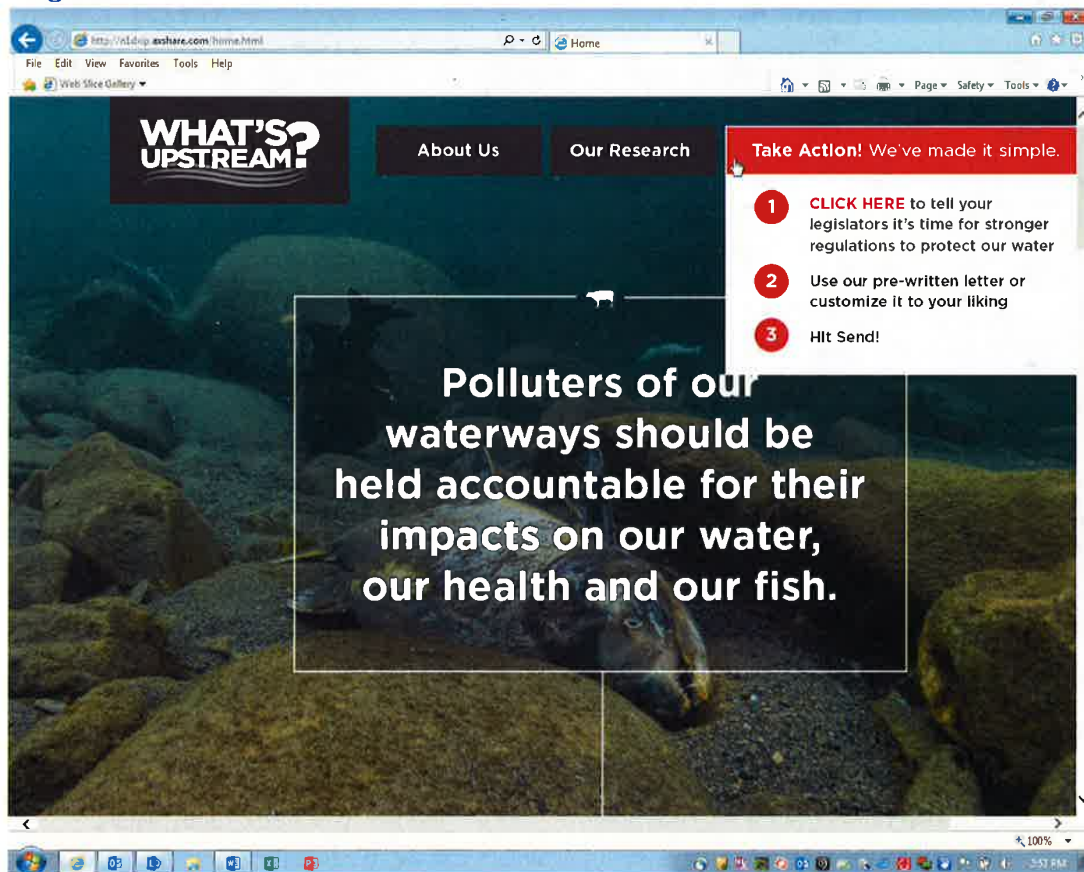
(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

EPA 8/14/15 comments on Swinomish subaward draft website,
<http://n1dxip.axshare.com/#p=home>

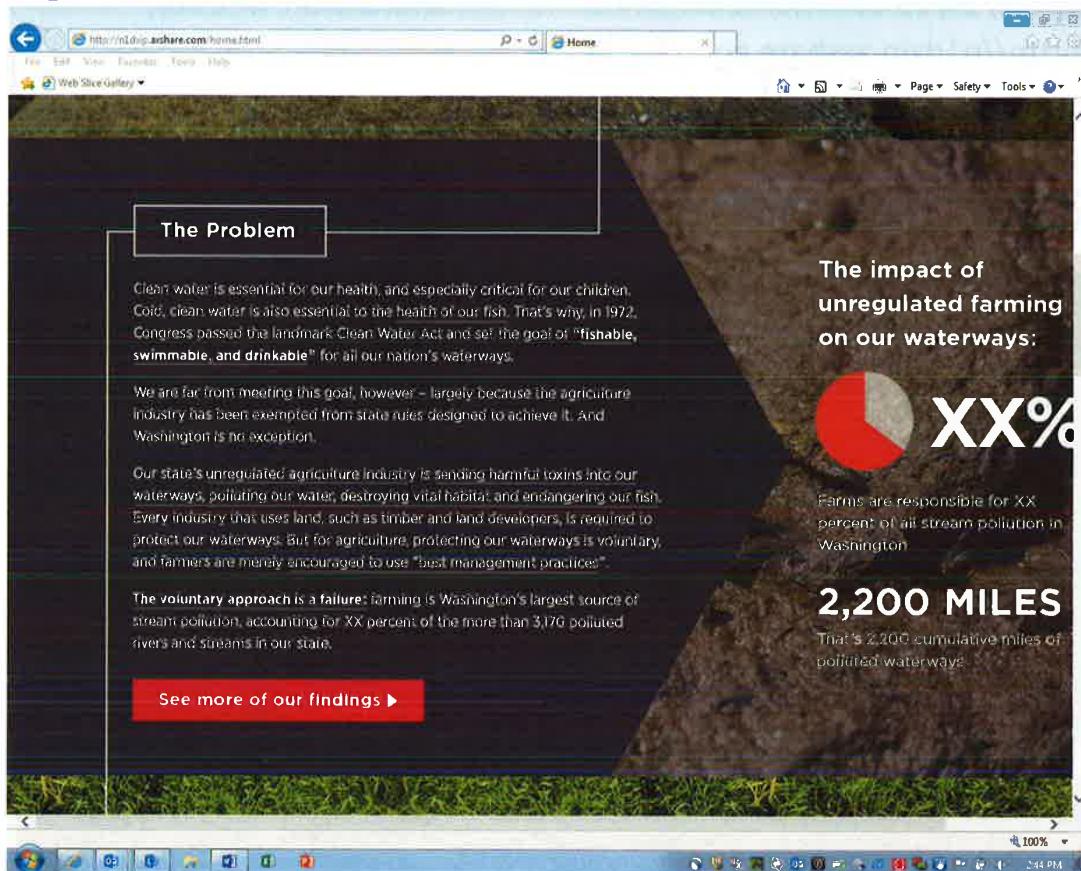
Page 1



Possible changes:

1. Edit text next to red number 1 as follows: "CLICK HERE to tell your legislators it's time for stronger regulations to protection of our water"
2. Suggested edit to box: "All ~~polluters of us~~ should be held accountable for our ~~their~~ impacts on ~~our~~ Washington's water, ~~our~~ health, and ~~our~~ fish."

Exhibit



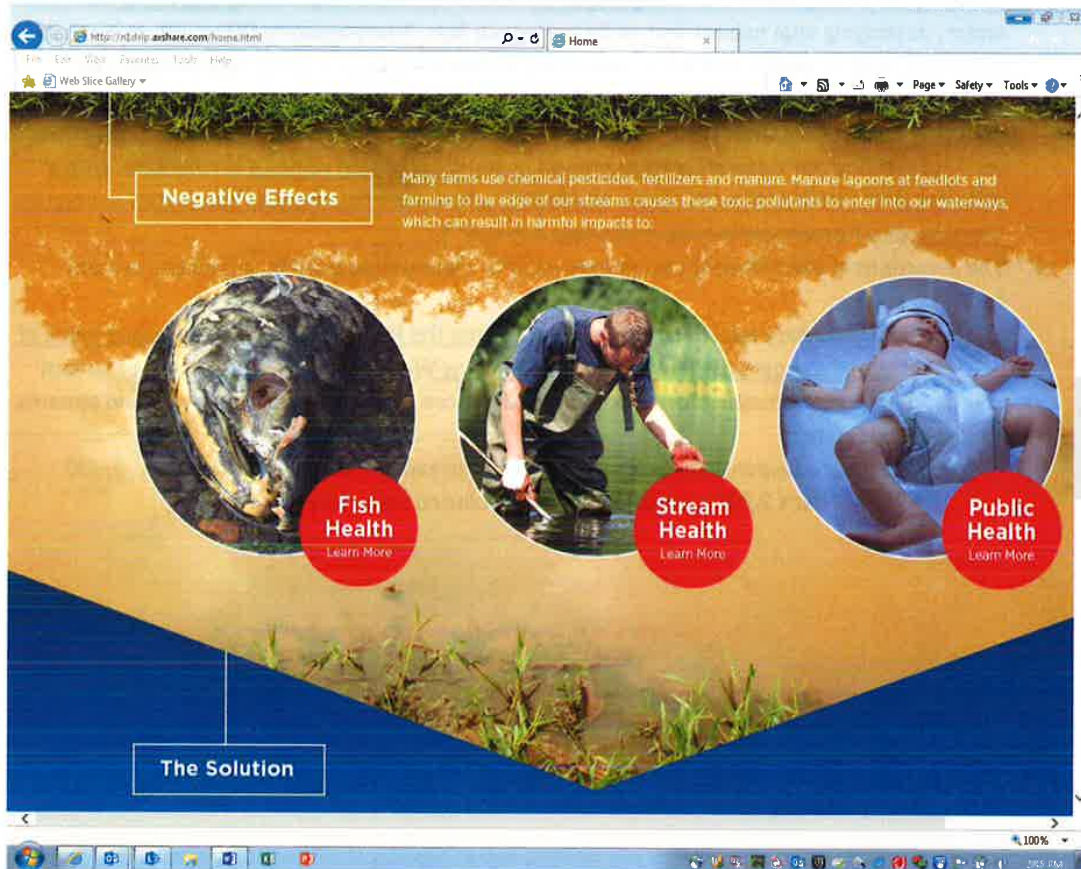
Suggested edits:

1. Revise the second paragraph to provide context (if desired, this can be done with an updated version of Larry's chart (which was based on data in Table 2 on p. 5 in ECY's 2001 report, <https://fortress.wa.gov/ecy/publications/summarypages/0110015.html>).

The text can read something like "Yet thousands of stream miles in Washington fail to meet this goal and remain impaired from sources including agriculture, stormwater runoff, and septic tanks. We are far from meeting this goal, ~~however – largely in part~~ because water quality permitting requirements do not apply to "non-point" sources of water pollution, which can include agricultural pollution." ~~the agriculture industry has been exempted from state rules designed to achieve it. And Washington is no exception.~~"

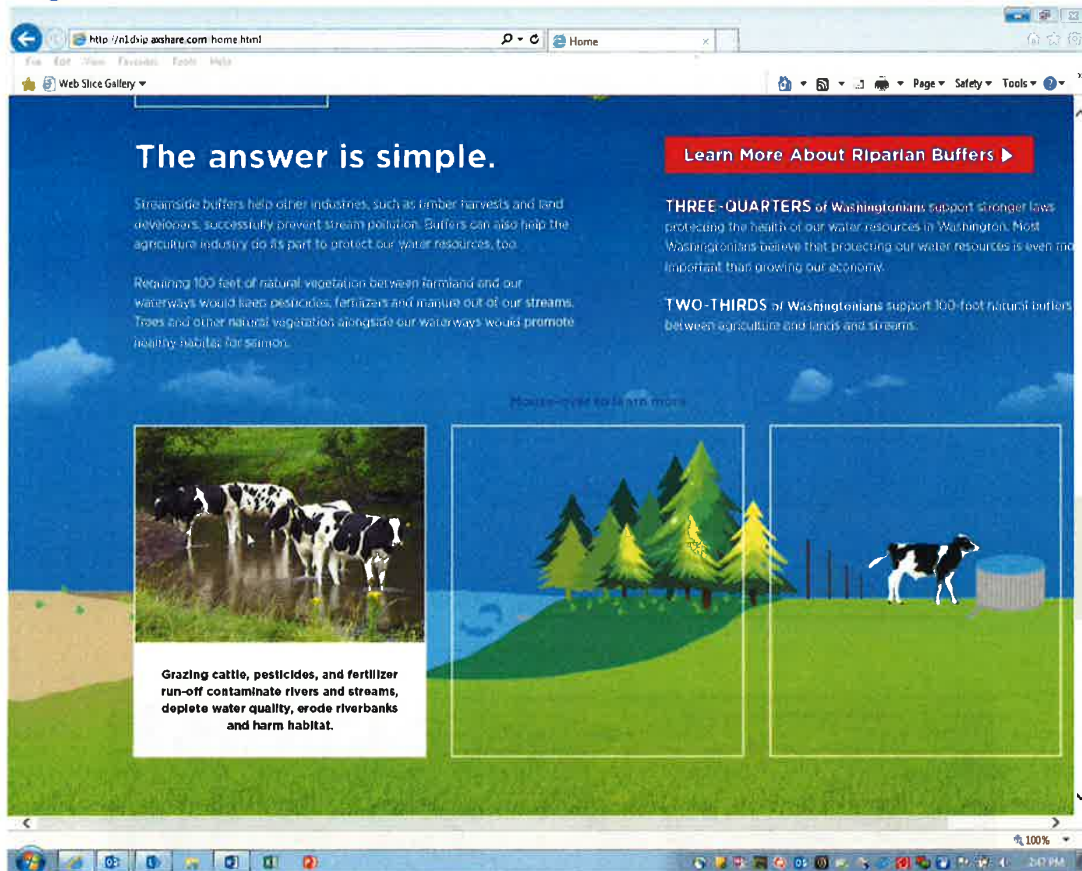
Note: The citation for the permitting requirement statement is 40 CFR 122.3, <https://www.law.cornell.edu/cfr/text/40/122.3>. Also, the "thousands" value in the preceding suggested text shouldn't be used unless you can verify with current information the impaired stream mile values on the website.

1. Third paragraph, "~~Our state's unregulated agriculture industry~~ Certain unregulated agricultural practices ~~is sending harmful toxins pollutants into our waterways, polluting degrading our water, destroying vital habitat and endangering our fish.~~ ~~Every industry~~ Other industries that uses land, such as timber and land developers, is required operate under requirements to protect our waterways. But for agriculture, protecting our waterways from non-point source pollution is voluntary, and farmers are merely encouraged to use "best management practices" (or "...protecting our waterways from non-point source pollution remains is voluntary, with a minority [ARE THERE DATA ON THESE NUMBERS] who have implemented adequately protective practices and farmers are merely encouraged to use.").
2. The assertions in the following statements must be clearly supported by a credible, current technical source:
 - a. **"The voluntary approach alone is not getting the job done is a failure: Despite years of effort by a progressive few, farming is remains Washington's largest source of stream pollution, accounting for XX percent of the more than 3,170 polluted rivers and streams in our state."**
 - b. **"Farms are responsible for XX percent of all stream pollution in Washington. 2,200 MILES. That's 2,200 cumulative miles of polluted waterways."**



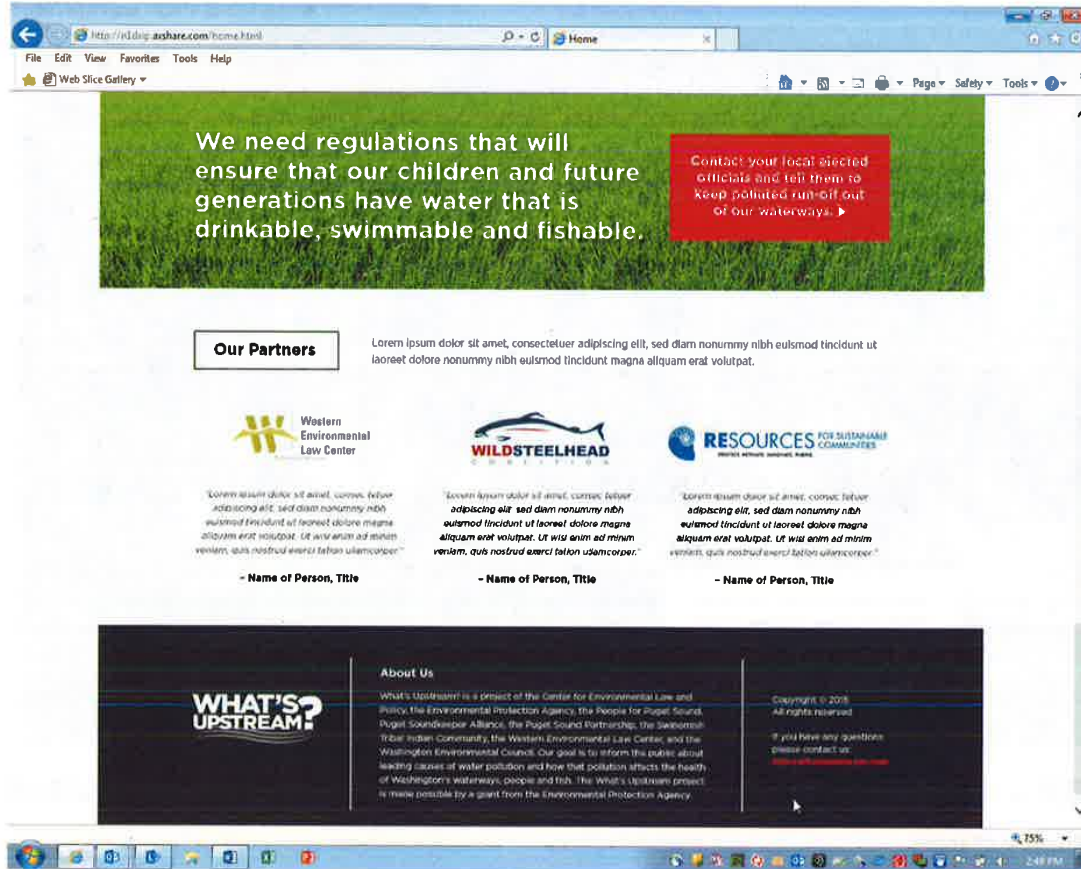
Suggested edits:

1. "Many farms use chemical pesticides, fertilizers and manure. Manure lagoons at feedlots and farming to the edge of our streams causes these ~~toxic~~ pollutants to enter into our waterways, which can result in harmful impacts to..."



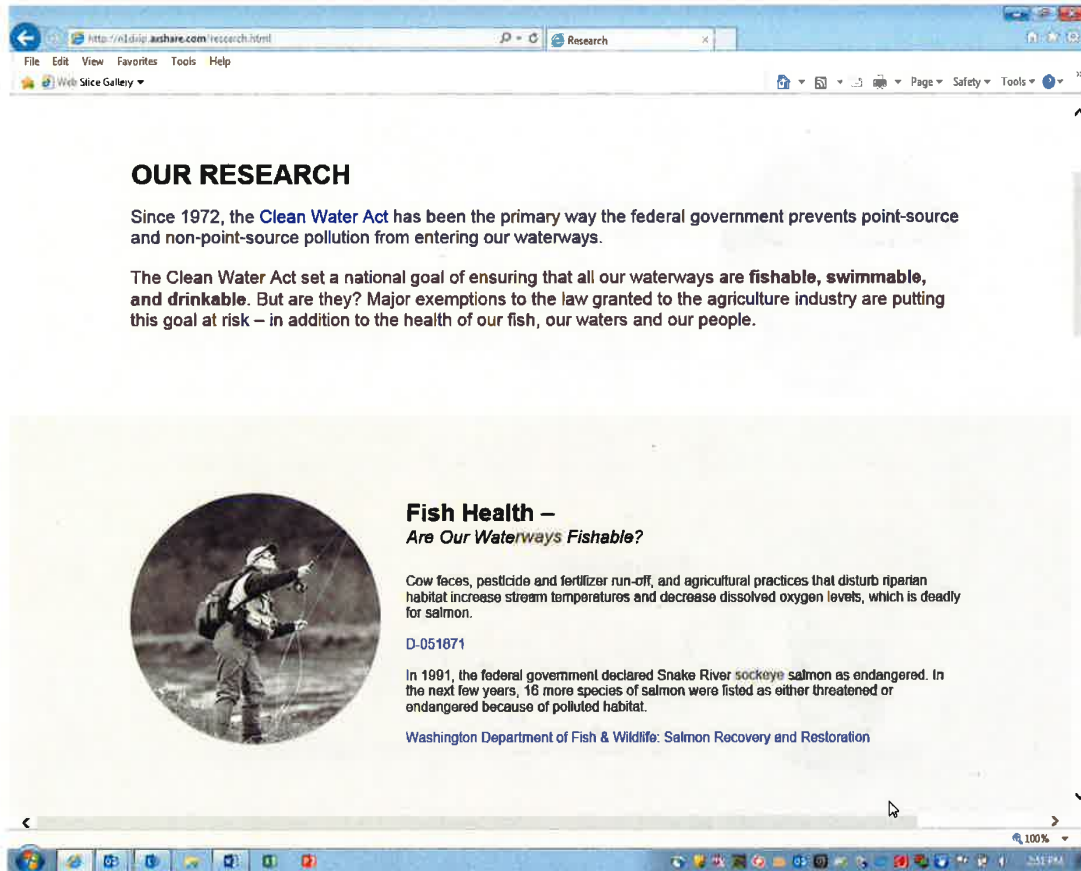
Possible changes.

1. Header, "The answer is simple." As in the letter, change to something like "A key tool is streamside buffers."
2. First paragraph. "...~~successfully prevent~~ dramatically reduce stream pollution." Citations to support this statement are needed.
3. Second paragraph. "~~Requiring 100~~ One hundred..."



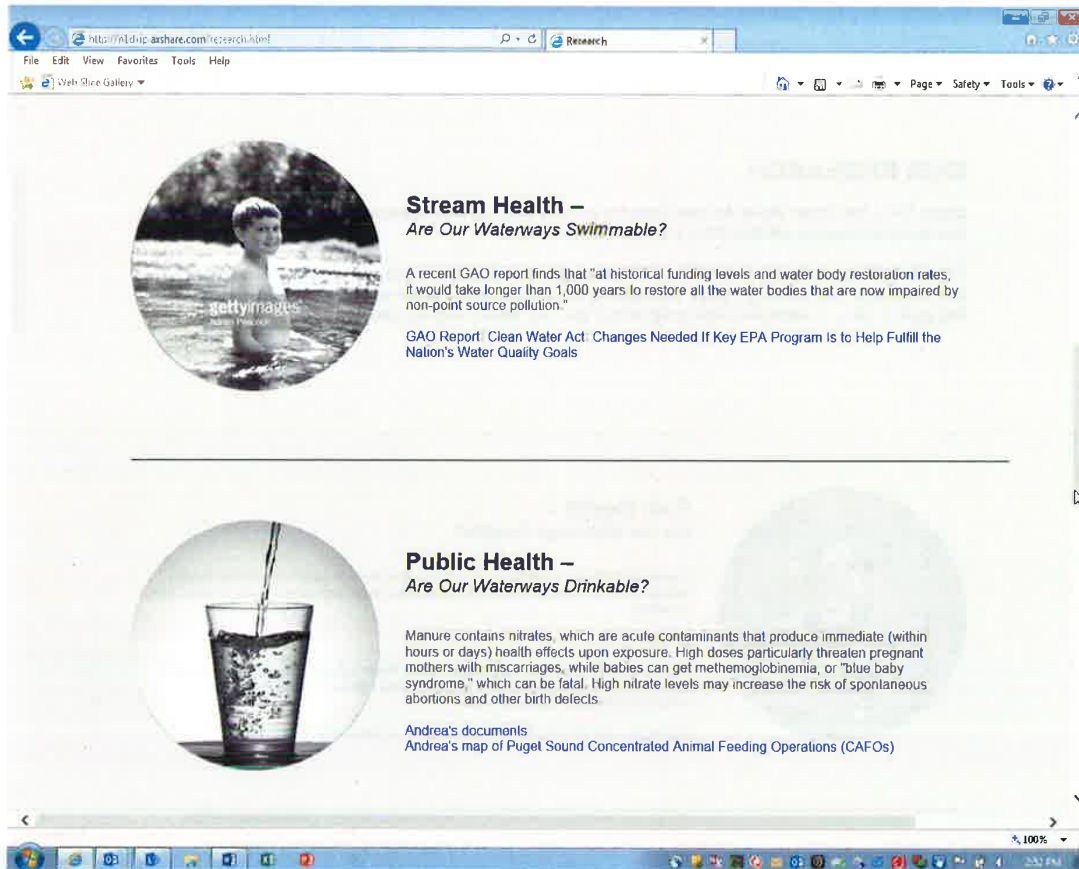
Possible changes:

1. "We need to regulations that will ensure...."
2. Under "About us," it is stated that "What's Upstream" is a project of the Tribe, CELP, EPA, PSP, WEC, and others. Have all these entities been given the opportunity to review and participate in the development of this content? Are all of them aware that this website is being presented as a joint project? This is an important point. All entities listed here should clearly agree to be listed as partners and agree with the content of this website. What process will be used to obtain and document their concurrence?



Questions/possible changes:

1. Under "Our Research:" Replace "Major exemptions to the law granted to the agriculture industry are putting..." with "Many of the nation's waters remain impaired due to agricultural non-point source pollution, which is not subject to federal water quality permitting requirements, putting..."
2. Under "Fish Health" – again, need context. Add sentence to beginning of first paragraph that says something like "Many sources lead to pollution impairments of Washington's waterways, including agriculture, stormwater runoff, septic tanks, and municipal point sources. With respect to agricultural sources, animal manure ~~Cow feces~~..."

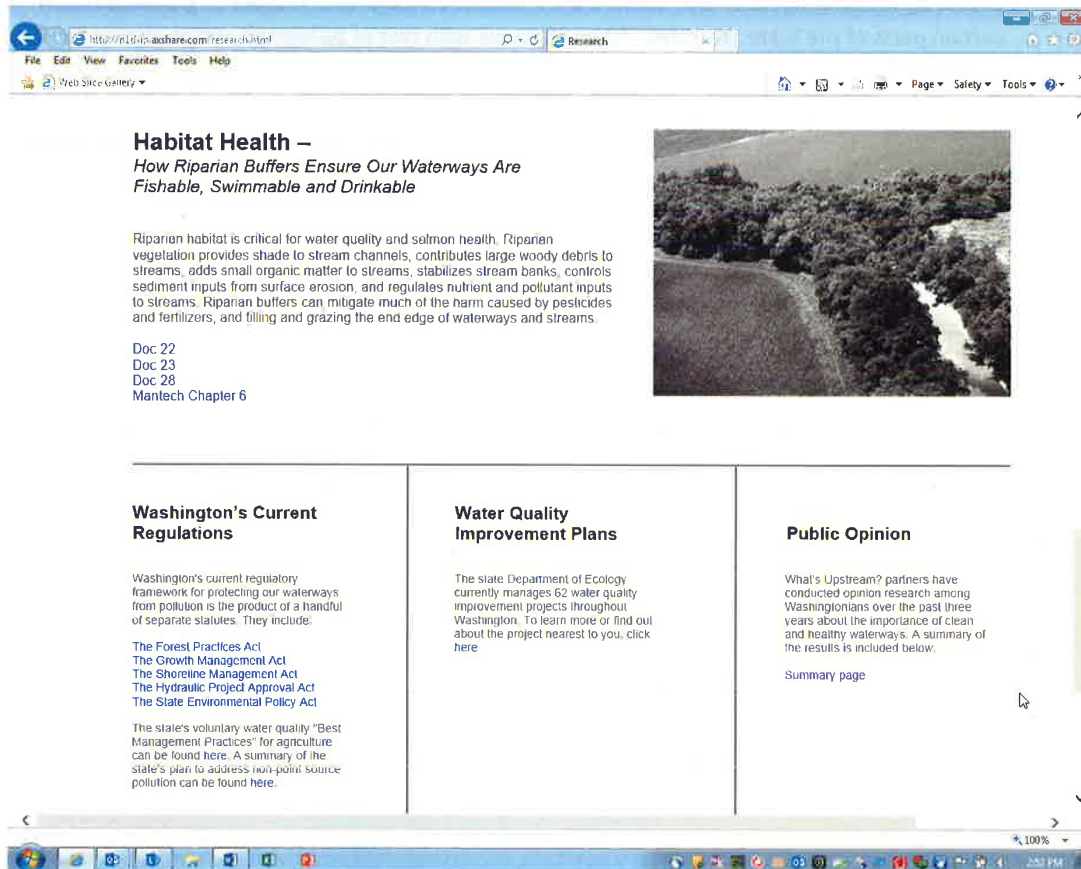


Issues/possible changes:

1. Under "Stream Health" – if the issue is "swimmable," not all non-point source pollution is bacterial. Add a sentence, "Many of these impaired waters exceed federal and state human health guidelines for recreational use of waters." And this statement will need a citation.
2. Under "Public Health" – don't the issues cited in this section pertain mainly to subsurface (groundwater/shallow groundwater)? Is there a pattern of nitrate concentrations in rivers and streams in WA that exceed the nitrate MCL? Is it appropriate to be highlighting these issues in a section on "waterways"?

If not, suggest editing the paragraph to say something like "Again, many sources lead to pollution impairments of Washington's waterways. With respect to agricultural sources, if improperly stored or used, animal waste has the potential to contribute pollutants such as nutrients (e.g., nitrate, phosphorous), organic matter, sediments, pathogens (e.g., giardia, cryptosporidium), heavy metals, hormones, antibiotics and ammonia to the waters we use for drinking, swimming and fishing." (EPA website, accessed 8/12/15, <http://www.epa.gov/region9/animalwaste/problem.html>).

And then, add a second paragraph that says something like "High nitrate levels originating from excess agricultural fertilizer and manure are a serious concern with respect to groundwater in certain parts of the State. Nitrates...[then continue with rest of paragraph, which should include citations]."



Comments:

1. Please confirm with ECY the following:
 - a. Under Habitat Health – do these documents represent BAS in WA on riparian buffers?
 - b. Under "Washington's Current Regulations – does this section, including the citations, accurately reflect WA's "current regulatory framework for protecting our waterways from pollution"?
2. Have the public opinion research results and interpretation undergone technical review by some knowledgeable external entity? In EPA comments on the FY12 workplan, we stated that "technical review is very relevant to this project" including the public opinion research work. In the subawardee's response to this comment, a commitment was made "to develop a more formalized technical review of the project." What were the results of the review of the public opinion research design, execution, and interpretation of results? It will be important for the research to be able to stand up to scrutiny by entities who are interested in this website and the information presented.

Draft letter to elected officials

Everyone knows that clean water is essential for our health, and is especially critical for our children. Cold, clean water is also essential to the health of our fish and shellfish.

But what's far less well-known is that many some farming practices commonly used in our state send potentially harmful toxins pollutants into our waterways, degrading polluting our water, threatening public health, destroying vital habitat and endangering our fish and shellfish.

Farming right to the edge of our streams allows pesticides, fertilizers, and land-applied manure to enter into our waterways, and is Washington's largest source of stream pollution. These practices are responsible for nearly a third of the polluted rivers and streams in our state.

Commented [CL1]: Please document basis for these statements.

Unfortunately, in many cases state water quality permitting requirements do not apply to these types of "non-point" sources of water pollution. Washington's agriculture industry has been exempted from most state permitting requirements to control these types of water pollution. Although farmers are encouraged to use voluntary best practices, but there has been limited use of these voluntary measures to date and agricultural sources continue to impair many waters and threaten recovery of have not resulted in meeting federal or state pollution standards or recovering salmon populations.

It is time to recognize that voluntary approaches have not been sufficient. Too many of our streams are polluted by agricultural practicesources that do not reflect best practices to reduce water pollution. When public opinion research shows that three-quarters of Washingtonians support stronger laws protecting the health of our water resources in Washington, and most Washingtonians believe that protecting our water resources is even more important than growing our economy, it is time to recognize that voluntary approaches alone are not working the public is ready to prioritize strong water resource protection.

One effective solution is mandatory streamside buffers. Other industries that work with the land, such as timber harvesters and developers, are required to use streamside buffers to prevent stream pollution. Adequate buffers can help the agriculture industry do its part to protect our water resources, too. The science is overwhelming: 100 feet of natural vegetation between farmland and our waterways would keep most pesticides, fertilizers, cows and manure out of our streams, and it would promote healthy habitat for our fish.

Commented [CL2]: Please document basis for this statement.

This issue has received little attention from the Legislature to date, but should. Fully two-thirds of Washingtonians support 100-foot natural buffers between agriculture lands and streams.

It's time to clean up our streams, for healthy fish, healthy farms and healthy families. I hope you can commit to examining this issue further, including the extent of the problem and effectiveness of streamside buffers as a solution. Holding the agriculturalall industries to the same responsibility as other industriesfor addressing non-point source pollution will help keep our rivers fishable, swimmable and drinkable for years to come.

Sincerely,

KUOW underwriting advertisement copy

Support for KUOW comes from What's Upstream dot com, a coalition of Washington clean water advocates working to protect salmon rivers and streams by addressing agricultural pollution as the major cause of pollution in salmon bearing streams. Clean water in Puget Sound starts with clean water upstream. More at What's upstream dot com.

Commented [CL3]: Please document basis for this statement.

To: Bonifacino, Gina[Bonifacino.Gina@epa.gov]
From: Chang, Lisa
Sent: Wed 12/2/2015 8:34:39 PM
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

To: Zachmann, Bill[Zachmann.Bill@epa.gov]; Bonifaci, Angela[Bonifaci.Angela@epa.gov]
From: Chang, Lisa
Sent: Tue 12/15/2015 8:42:32 PM
Subject: RE: One Hot Topic for Week of 12/14/15

Hi Bill, thanks for cc-ing me. I wrote up a hot topic for the website last week.

My thought about the Dan Berentson input is that it would be more appropriate to put that in a short FYI note to Peter and Lucy, asking if any follow-up with Dan Berentson would be needed.

Just my thoughts.

From: Zachmann, Bill
Sent: Tuesday, December 15, 2015 11:32 AM
To: Bonifaci, Angela <Bonifaci.Angela@epa.gov>
Cc: Chang, Lisa <Chang.Lisa@epa.gov>
Subject: One Hot Topic for Week of 12/14/15

Angela and Lisa:

I am tossing this in as a potential Hot Topic, but I'm also deferring to Lisa's wisdom of retaining for forward up to Dan, or not, since this is 'live' as we speak:

What's Upstream? Website Content Complaint

PS Team staff (Zachmann) received a call from Skagit Public Works Director (Dan Berentson) on Dec 14. He was unhappy with the site's content and expressed dismay that EPA was a funding partner of site's development and posting. He felt it detracts and distorts from current, local Pollution Identification and Correction (PIC) program efforts. Specifically, the site is overtly critical of continued reliance on voluntary compliance methods, when in fact, the Skagit PIC program has a built-in local and state regulatory compliance and enforcement protocols. The site also provides visitors with direct means

to contact local, state and national elected officials. Consequently, he questioned the appropriateness of using federal funds to establish what can be viewed as a lobbying effort. [NOTE: OWW-PS Team staff (Chang, Rylko and Zachmann discussed w/Murchie on 12/14. He is personally checking on the fund use angle. Staff waiting for outcome(s).] Contacts: Lisa Chang (3-0226), Bill Zachmann (3-9543).

Bill Zachmann

Grants Project Officer-Puget Sound Team

Environmental Protection Agency - Region 10 - Office of Water and Watersheds

Washington Operations Office - 300 Desmond Dr. SE - Suite 102, Lacey, WA 98503

Desk: 360-753-9543

Cell: 360-280-9149

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

From: Bonifaci, Angela

Sent: Tuesday, December 15, 2015 10:24 AM

To: Marshalonis, Dino <Marshalonis.Dino@epa.gov>; Bonifacino, Gina <Bonifacino.Gina@epa.gov>; Castner, Chris <Castner.Chris@epa.gov>; Chang, Lisa <Chang.Lisa@epa.gov>; Dunn, Ann <Dunn.Ann@epa.gov>; Hanft, Sally <Hanft.Sally@epa.gov>; Murchie, Peter <Murchie.Peter@epa.gov>; Richter, Randy <Richter.Randy@epa.gov>; Rylko, Michael <Rylko.Michael@epa.gov>; Whitaker, Melissa <Whitaker.Melissa@epa.gov>; Zachmann, Bill <Zachmann.Bill@epa.gov>

Subject: Hot Topics Due COB Tomorrow

Hi All,

Seems like we should have some Hot Topics to submit this week. Please get them to me in the usual format (Times New Roman, 12 point, no bold or italics, etc.) by COB tomorrow.

Thanks!

Angela

--

Angela Bonifaci | Team Leader

EPA Puget Sound National Estuary Program

206.553.0332 | bonifaci.angela@epa.gov

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