



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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OFFICE OF  
REGIONAL COUNSEL

November 3, 2016

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

Re: Case No. 8321

Dear Ms. Lopez:

I am writing to provide information to the Washington State Public Disclosure Commission in response to two letters submitted on behalf of Save Family Farming (SFF) dated September 14 and October 14, 2016. Although neither the EPA nor EPA Regional Administrator Dennis McLerran has been notified or received a copy of these letters by the Commission or SFF, the letters allege that the EPA's Regional Administrator conducted grass roots lobbying under state regulations. While EPA takes these allegations seriously, we believe that the Commission is not the appropriate forum to resolve a federal grant funding issue, particularly given that there are federal processes underway to review the Agency award at issue here. We would also point out that there are significant factual errors in the SFF letter.

As will be made clear below, EPA's National Estuary Program (NEP) grant funding was directed to the Northwest Indian Fisheries Commission (NWIFC) and not to the Swinomish Indian Tribal Community (Tribe). In addition, funding decisions regarding the grant to the NWIFC were made by EPA as an Agency and not by Mr. McLerran personally. This letter clarifies EPA's role and actions and requests that Mr. McLerran be dismissed from this matter as expeditiously as possible because he did not personally provide any funding "intended, designed or calculated primarily to influence legislation."

By way of background, Puget Sound is an estuary of national significance under the federal Clean Water Act (CWA) and the NEP. The EPA receives money from Congress each year under a geographic provision in the annual appropriations act in order to help protect and restore Puget Sound. We distribute these funds primarily through assistance agreements to state, local, tribal governments, and tribal consortia to help implement the State of Washington's Puget Sound Action Agenda. The Action Agenda serves as the State's Comprehensive Conservation and Management Plan required under the CWA.

As part of the CWA and the NEP, EPA provides federal funds to the NWIFC via a cooperative agreement. There are important aspects of this cooperative agreement, which are further explained in the attached enclosure. One aspect includes the structure of the cooperative agreement, under which EPA has a direct relationship with the NWIFC, as the awardee, but no such relationship with any of the NWIFC's sub-awardees. EPA provided funds to the NWIFC, as the awardee, to conduct a program to fund and manage various implementation projects of high tribal priority that are consistent with the Action Agenda. The Tribe is one of many recipients of a sub-award from the NWIFC. The Tribe expended some of the funds it received from the NWIFC to conduct an education and outreach project focused on reducing non-point source water pollution impacting water quality and salmon habitat in



Puget Sound. This project was referred to as a "Non-Point Pollution Public Information and Education Initiative."

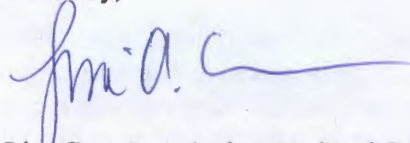
SFF takes issue with activities conducted by the Tribe over a period of years, some of which may have been funded under its sub-award by the NWIFC, as well as other activities not funded by the sub-award. For example, the NWIFC has informed EPA that it received invoices from the Tribe for work completed under NWIFC-approved work plans for federal fiscal years 2010-2012 funding. Although the Tribe subsequently proposed work using fiscal years 2013-14 funding, no costs associated with that work have been invoiced by the Tribe. In fact, the NWIFC is working with the Tribe to redirect its funding to projects other than the Initiative.

You should also be aware that the EPA Office of Inspector General (OIG) is in the process of performing two audits to review the cooperative agreement between the EPA and the NWIFC and the sub-award to the Tribe. The scope of the audits are comprehensive and thus far have included a review of documents as well as interviews of EPA staff. EPA has fully cooperated in this process and believes that this is the appropriate venue to resolve any issue related to the cooperative agreement. The OIG has made no determination at this time that any federal lobbying restriction has been violated.

Finally, we would like to explain the role of the EPA Regional Administrator in the context of this cooperative agreement. The Regional Administrator for Region 10 oversees federal environmental programs within the States of Washington, Oregon, Idaho, and Alaska, including Indian Country. This role includes regular communication with state and tribal leaders to carry out the EPA's objectives. When issues arose regarding this cooperative agreement that EPA staff and management believed required conversations at a higher level, the Regional Administrator was requested to relay comments and concerns on behalf of the Region. At no point during the course of the actions alleged in SFF's letter did the Regional Administrator act inappropriately nor were his actions outside the scope of his official duties and capacity.

Thank you for your consideration of the information provided in this letter and attached enclosure. We respectfully request that the Commission dismiss the EPA and Regional Administrator, Dennis McLerran, from this complaint as soon as possible. Please let us know if there is any additional information we can provide to facilitate your response. If you have any questions, please feel free to contact Socorro Rodriguez, Assistant Regional Counsel, at 206-553-6296 or [rodriguez.socorro@epa.gov](mailto:rodriguez.socorro@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa A. C.", with a long horizontal flourish extending to the right.

Lisa Castañon, Acting Regional Counsel  
EPA Region 10

cc: Linda A. Dalton, WA Attorney General's Office

**Enclosure: Information regarding the Cooperative Agreement (PA-00J32201)  
between EPA and the NWIFC**

1. The cooperative agreement between the EPA and the NWIFC is governed by numerous laws and regulations, including the federal Anti-Lobbying Act, 18 U.S.C. §1913, and is currently being audited by EPA's Office of Inspector General. The overall objectives of the OIG audits are to determine whether the costs claimed, including costs associated with the *What's Upstream* campaign, are reasonable, allowable and allocable in accordance with applicable laws, regulations, and terms and conditions of the agreement; whether EPA followed applicable laws, regulations, and policies when awarding and performing oversight of the cooperative agreement; whether the NWIFC followed applicable laws, regulations and policies in performing and implementing the cooperative agreement, and whether EPA had any communications with the NWIFC and/or Strategies 360 regarding the *What's Upstream* campaign.
2. In addition to the federal Anti-Lobbying Act, there are a multitude of federal laws, regulations, and other restrictions, such as the anti-lobbying provisions in federal appropriations bills and the Uniform Grant Guidance (2 CFR 200). Current restrictions on using federal grant funds to influence state legislation apply only to nonprofits and institutions of higher education; they do not apply to a tribal sub-recipient such as the Swinomish Tribe. See 2 CFR 200.450(c). Prior to December 2014, the applicable lobbying provision applied to governmental units. See 2 CFR Part 225, Appendix B, Item 24 (the codified version of OMB Circular A-87). A sub-award recipient, such as the Tribe, would have been subject to the Cost Principles applicable to governmental recipients. 40 CFR 30.27; 40 CFR 31.22. However, unlike the lobbying restrictions that apply to nonprofits (2 CFR Part 230, Appendix B, Item 25) the former lobbying restrictions on governmental units apply to lobbying for grants, contracts etc., as opposed to influencing state legislation.
3. The EPA actions associated with the funding and administration of this cooperative agreement were taken pursuant to delegated statutory authority and any actions by EPA employees identified in the allegations were conducted in their official federal capacity.
4. The cooperative agreement is a type of federal assistance agreement under which the EPA has a specific role with the recipient, the NWIFC, but a much more limited role when the NWIFC provides a sub-award to an entity such as the Tribe.
5. The fundamental structure of this cooperative agreement is privity between the EPA and the NWIFC and between the NWIFC and the Tribe. Substantial involvement is expected between EPA and the NWIFC when carrying out the activity contemplated in a cooperative agreement. A cooperative agreement, however, is fundamentally different from a federal government contract, and the EPA does not have the ability to direct the content of the work product of the recipient of a sub-award in the same manner as a contractor or even a grantee.
6. Under the terms of the cooperative agreement, the NWIFC is responsible for ensuring that proposed sub-award costs are necessary, reasonable, and allocable; monitoring a sub-recipient's

performance; and ensuring compliance with grant terms and conditions, laws, regulations, and policies. The NWIFC, not the EPA, funded all sub-awards to the Tribe and approved work conducted by the Tribe. There is no direct relationship between the EPA and the Tribe under this cooperative agreement.

7. As part of the EPA's defined role, the EPA engaged with the NWIFC and the Tribe to discuss proposed annual work plans that the NWIFC requires of its sub-award recipients, including tasks delineated under those work plans. Additionally, the EPA provided technical assistance and coordination in the form of comments and recommendations during routine program reviews, such as flagging potential areas of non-compliance. The EPA also provided guidance regarding the federal lobbying restrictions applicable to assistance agreements.