



*Washington state's family farmers fighting back against anti-farm attacks*

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February 21, 2017

Commission Chair Anne Levinson  
Commission Vice Chair John Bridges  
Commissioner Dave Ammons  
Commissioner Katrina Asay  
Commissioner Jack Johnson

Dear Commissioners:

Farmers across Washington state are extremely disappointed with the Public Disclosure Commission staff recommendation that the Commission not take enforcement action against the individuals and consultant responsible for the What's Upstream violations of our state lobbying and campaign laws. The staff recommendation ignores the plain facts of the situation and offers bizarre conclusions that will likely affect enforcement of these laws for some time to come.

The What's Upstream campaign was budgeted to spend over \$655,000 in federal funds and spent a significant percentage of that for the primary purpose of persuading state legislators to enact environmental laws regulating environmental practices. They did this by polling likely voters to demonstrate to the legislature that their constituents supported their legislative goals, by building coalitions with other environmental groups to support their grassroots campaign, by radio ads, billboards and social media messages to drive people to their website where visitors were encouraged to contact the legislature or follow a "take action" button that would deliver a form letter to the legislators. If there was any doubt about the intent of this grassroots lobbying effort, the sponsors of the campaign crowed to EPA and their coalition that the website, advertising and social media campaign were all launched just in time for the 2016 legislative session.

We refer you to the article in the Capital Press of February 18 with the headline: *"Watchdog: What's Upstream apparently spent too little."*

The determination that the campaign website's "Take Action" element likely constituted illegal lobbying but failed to meet the reporting requirements of \$1400 is one of several strange and unjustifiable conclusions in the staff recommendation. Public records show that the campaign budget of \$655,000 included \$34,000 spent on website development. Is the staff saying that

since this specific element of the site wasn't broken out in the accounting, that it fell short of the reporting requirement?

This is just one of several "innovative" explanations. One that is truly confounding is that the spending of personal or employer money is the determining factor in grassroots lobbying:

*"PDC staff did not find that Mr. Wasserman spent personal funds, or the funds of the Swinomish Tribe, on grass roots lobbying. Since Mr. Wasserman spent no funds on grass roots lobbying activities, he is not considered a sponsor of a grassroots lobbying campaign in accordance with RCW 42.17A.640."*

The record shows that \$655,000 was budgeted and we know that several hundred thousand dollars were spent. The staff declares that no lobbying took place because no personal or employer funds were spent. If this position is upheld by the Commission all organizations seeking to influence legislation will strictly avoid personal or employer funds. Misbegotten funds such as used in this campaign will avoid any accountability.

Another question to be raised goes to an essential element of the staff recommendation. The Capital Press article highlights this defense:

*"PDC Executive Director Evelyn Fielding Lopez said that regardless of how much was spent specifically on the [Take Action] link, the staff did not consider it a lobbying activity. The form letters generated by the link did not advocate for a specific bill or ballot initiative, she said. 'It's not really a good policy that you would have to be registered with the state every time you're discussing ideas,' Lopez said."*

It is important to note that Fielding Lopez's comment to the press conflicts with the staff report where "that activity [Take Action button] could have been considered a grass roots lobbying expenditure." But staff discounted it, not because it wasn't considered lobbying, but because it did not meet the \$1400 reporting requirement. Director Lopez's comment is in direct contravention of PDC precedent. Prior to today, it was the law in Washington that if the primary focus of a campaign is in trying to influence the legislature, it is a grassroots lobbying that needs to register and report. The PDC in an earlier opinion concluded that efforts to collect signatures on a statement to support partition of eastern Snohomish and King County into new counties was clearly grassroots lobbying even though there was no pending or proposed legislation – that was not a determining factor in whether there was grassroots lobbying. With respect to Director Lopez, **it is really good policy** to have individuals orchestrating a \$655,000 grassroots campaign with polling, advertising, and messaging to the legislature registered and reporting to the PDC.

Further, submissions by Wasserman to EPA clearly state that the ultimate goal of the project was to pass a citizen's initiative mandating stream buffers. The clear legislative and regulatory intent of the entire project was made explicit in all project plans and documents. Washington law specifically requires a campaign to register as a grass roots lobbying effort when it has made expenditures exceeding one thousand dollars within a three-month period or more than five

hundred dollars within any one-month period “presenting a program to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation.” RCW 42.17A.640(1). It is hard to see how this could be more clear despite the PDC Executive Director’s efforts to interpret the campaign as merely “discussing ideas.” If all one has to do to avoid our state’s accountability is to avoid reference to legislative action by specific bill title or specific bill number, this will result in significant change in organized political action.

There are other significant problems with the PDC staff recommendation. They state that the What’s Upstream campaign was separate from the Swinomish Tribe’s planned citizen’s initiative when the documents show the initiative was the **purpose** for the campaign. They state that the campaign did not “take concrete steps” yet everything in the campaign was aimed at passing very specific laws mandating stream buffers. They accept the defense of EPA Administrator McLerran who stated he had no control over how the money was spent when the FOIA documents reveal the specific discussions of staff noting the grant terms provided the basis for the EPA to stop the campaign. Indeed, the campaign was halted by staff before being allowed to continue by McLerran.

Save Family Farming urges the commission to take enforcement action in this matter. Our family farms were the subject of abuse and the improper use of federal funds that are appropriated for the restoration of Puget Sound. There is little doubt that if the individuals involved had complied with the law, the improper use of federal funds would have been disclosed at early date and immediately suspended just as the campaign was suspended in the Spring of 2016 after its funding was fully disclosed to Congress and EPA headquarters. The subterfuge engage in by Wasserman and McLerran would have been disclosed much earlier if they had complied with the law.

Sincerely,



Larry Stap  
President, Save Family Farming



Gerald Baron,  
Executive Director, Save Family Farming

## **Save Family Farming Response to Public Disclosure Commission**

### **Staff Recommendation**

Farmers across Washington state are extremely disappointed with the decision of the Public Disclosure Commission to decline to enforce state campaign laws involving the sponsors of What's Upstream.

The rationale provided is so full of statements in direct conflict with the clear facts of the case that it is hard to avoid the conclusion that this watch-dog agency determines enforcement more based on who the law breaker is rather than a reasonable interpretation of the law. For example, if the Grocery Manufacturer's Association, the subject of a \$14 million fine for violations of these laws, were to lobby for legislation or a citizen's initiative as the What's Upstream sponsors did, we would most certainly have seen a different decision.

The PDC is sending a message that as long as you are working for a Tribe, you can spend public money to lobby for and promote legislation for any reason without any accountability. This message, along with the implied admission by the PDC of tribal immunity from state campaign laws needs to be addressed by our legislators. Save Family Farming will work to ensure clarification and proper enforcement including by tribal leaders and their employees.

We will provide a detailed expose of the misrepresentations of fact provided by the PDC on our Save Family Farming website. But a few examples will suffice to show the clear disregard for the facts of this situation in the letter provided by the Commission:

1. The Commission staff stated:

*“Also in 2015 and separate from the What's Upstream project, the Swinomish Tribe “considered the possibility of an initiative which would increase riparian buffers on agricultural lands in order to protect water quality and salmon habitat.”*

The documents released through the Freedom of Information Act show that Larry Wasserman stated that the ultimate goal of the What's Upstream campaign was to pass a citizen's initiative to mandate large buffers. He also noted that Strategies360 would be conducting the signature gathering portion of the ballot initiative. It was only after EPA staff objected to including these specific costs in the project did Wasserman remove those items from the project budget. However, the campaign aimed at building voter support for the initiative went on. State law states that the trigger for reporting is the spending of money toward an initiative, not the actual filing of a ballot measure.

2. The Commission staff stated:

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

Released documents provided to the PDC and a letter from Swinomish Chairman Brian Cladoosby show this to be completely false. EPA staff determined that the grant required substantial review by the EPA and it was on that basis that they determined, when challenged by Wasserman, that they had the legal right to halt the campaign. The campaign was halted until Administrator McLerran intervened and it continued. Chairman Cladoosby in a letter to Congressional leaders on April 25, 2016 stated: “Staff from the EPA were intimately involved in helping us develop the content of the public materials...”

The fact remains that the EPA Administrator could have stopped the lobbying effort and attack against farmers, but overruled his staff and allowed it to continue.

3. The Commission staff stated:

*“Mr. Wasserman’s counsel further asserted that the public outreach efforts undertaken by the Swinomish Tribe as part of the What’s Upstream activities “did not take any concrete steps to promote or oppose specific legislation and therefore did not undertake grass roots lobbying.”*

Apparently, the Commission believes that spending \$600,000 of public money for the stated purpose of influencing legislators to pass very specific measures and to build public support for a citizen’s initiative are not “concrete steps.” Putting a “Take Action” button on your website to facilitate getting messages in support of specific measures is also not “concrete steps.” We are left wondering what is concrete?

4. The Commission staff stated:

*“PDC staff did not find that Mr. Wasserman spent personal funds, or the funds of the Swinomish Tribe, on grass roots lobbying. Since Mr. Wasserman spent no funds on grass roots lobbying activities, he is not considered a sponsor of a grassroots lobbying campaign in accordance with RCW 42.17A.640.”*

This is the most outrageous statement of all. It clearly says that because Wasserman did not spend his own money, or the Tribe’s money, he was not lobbying. Apparently, the PDC believes that if you can persuade a federal official to give you taxpayer money for lobbying, then that means it is not really lobbying. Actually, it appears you can lobby all you want with anyone’s money as long as it is not your personal funds or those of your employer.

5. The Commission staff stated:

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

As mentioned above, the law says that if you spend money toward the passage of a citizen’s initiative you must register as a political committee. It does not say you have to file a ballot measure before reporting. The trigger is the spending of money. Documents make it clear that it was the intention of the sponsors to file an initiative and that the “ultimate goal” of the public outreach was to pass that measure.

6. The Commission staff stated:

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

Let’s get this straight. The PDC says that the “Take Action” button would be considered a lobbying expense but since less than \$1400 was spent on it, it didn’t qualify. Records show that the sponsors spent over \$35,000 to have Strategies360 build a website which included the “Take Action” button. Of course, over \$600,000 was spent on all the public outreach leading to the Take Action button. How is it possible they can conclude that less than \$1400 was spent? Apparently the message here is that you can spend a million dollars on a lobbying effort, but if you break it all down into tiny little components of less than \$1400 then you don’t have to report.

7. The Commission staff stated:

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

The PDC lets Mr. McLerran off the hook on the same basis they let Wasserman and Strategies360 off the hook. Since they didn’t spend their own money, it’s not lobbying. They also say he did not directly authorize federal funds. So then, who did? Someone authorized the Northwest Indian Fisheries Commission and the Swinomish to spend \$600,000 of taxpayer money on this lobbying campaign. Since we know that it was McLerran who overruled staff objections to the use of this money for lobbying, how can they say McLerran didn’t authorize?

The PDC's message again is you can avoid the state's obligation to disclose your overt political activity by not spending your own money, or, if you are a federal official, make sure you don't have any fingerprints on the public money being spent.