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December 19, 2016
via email

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

Re: Save Family Farming Complaint Against Wasserman, Strategies 360 and EPA

Dear Ms. Fielding Lopez,

This letter supplements our December 1, 2016 letter and responds to the second amended complaint filed by Save Family Farming (SFF) against our client, Larry Wasserman. With the latest iteration of its complaint, SFF continues its baseless and wasteful harassment of a Swinomish Indian Tribal Community official, and fails to add any new allegations or substantive content to its allegations. Mr. Wasserman stands by all defenses asserted in the December 1, 2016 letter and urges prompt dismissal of all of SFF's complaints.

Much of SFF's second amended complaint focuses on the EPA's administration of grants, and appears to be largely a political attack against an EPA official and/or the EPA itself. Grant administration and political grievances are wholly irrelevant to the Fair Campaign Practices Act and the PDC's review of these matters. There is no reason to grant SFF's request to delay a decision pending EPA grant audits or FOIA requests. The SFF letter also contains many factual inaccuracies. Mr. Wasserman has already set forth the relevant facts in his December 1 response letter. This response therefore incorporates the December 1 response letter by reference and focuses on further explaining Mr. Wasserman's legal defenses.

On the merits of the grassroots lobbying claim, SFF cites to PDC Declaratory Order No. 12 for the proposition that any encouragement of any contact with the legislature constitutes grass roots lobbying. SFF's interpretations of RCW 42.17A.640(1) and PDC Declaratory Order No. 12 are overbroad.

In PDC Declaratory Order No. 12, later affirmed in *Peacock v. Pub. Disclosure Comm'n*, 84 Wn. App. 282, 928 P.2d 427 (1996), the PDC found that a non-profit organization which was incorporated solely for the purpose of lobbying the legislature to create a new county had to register as a grassroots lobbying campaign. The organization had developed a petition describing the new county and was expending resources gathering signatures. Once enough

signatures were acquired, the organization planned to submit the petition to the Secretary of State, which would automatically trigger consideration of the petition by the legislature. The petition was a clearly defined final document that would later be presented to the legislature as functional proposed legislation.

PDC Declaratory Order No. 12 and *Peacock* stand only for the proposition that grassroots lobbying registration is required where an organization spends funds supporting already developed legislation that has not yet been formally proposed to the legislature. That principle accords with *Young Ams. for Freedom v. Gorton*, in which the Washington Supreme Court held that the Fair Campaign Practices Act's grassroots lobbying provision is constitutionally sound because it applies only to specific legislation:

> Reporting would not be required when the subject campaign does not have as its objective the support or rejection of specific legislation. Thus, no reporting is required of the [organization] unless it seeks to affect the disposition of specific pending or proposed legislation.

83 Wn. 2d 728, 732, 522 P.2d 189, 191 (1974) (emphasis in original). The court's emphasis on specificity throughout the opinion drives home that the grassroots lobbying registration requirement applies only to clearly defined, already developed legislation.

The Swinomish Indian Tribal Community (Swinomish or Tribe) public education initiative falls well short of the threshold established in *Young Americans for Freedom*, *Peacock*, and PDC Declaratory Order No. 12. The What's Upstream website urged communication relating to the ideas that water quality is important and that riparian buffers are an effective means of protecting water quality. There was nothing resembling legislation. There was no "specific," already developed legislation prepared to be presented to the legislature, and therefore the grassroots lobbying registration requirements did not apply. Surely, an entity can encourage concerned citizens to express their support for environmental protection to their elected representatives without triggering lobbying registration requirements.

PDC Declaratory Order No. 12 and *Peacock* are further distinguishable based on the intent of the entity. In that matter, the entity was formed and funded solely for the purpose of achieving specific legislation, and the expenditures were "intended, designed, or calculated primarily to influence legislation." RCW 42.17A.640(1). In contrast, the Tribe's intent in carrying out the public education initiative was to educate the public on water quality issues using a range of strategies. And, of course, the Swinomish Indian Tribal Community, Mr. Wasserman's employer, carries out all of the varied functions of a sovereign government. The grant materials provided by SFF confirm that the initiative was "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." Exh. A to SFF's Second Amended Complaint. Notably, the Tribe's description of the intent of the initiative focuses on public education, with no mention of legislation.

In regards to the Tribe's sovereign immunity, SFF mistakenly cites *Harlow v. Fitzgerald*, 457 U.S. 800 (1972) for the conclusion that Mr. Wasserman should have personal liability for

alleged violations of the Fair Campaign Practices Act. *Harlow* concerns personal liability of Federal government officials and has no bearing on the claims asserted against Mr. Wasserman. SFF's complaint is directed at Mr. Wasserman for actions taken in his official capacity at the direction of Tribal leadership. SFF's complaint is therefore truly directed at the Tribe, and the Tribe and Mr. Wasserman are immune from suit.

SFF notably fails to respond to any authority cited in the Swinomish's December 1 letter, fails to cite a single case relevant to Indian law or a tribal official's sovereign immunity, and fails to provide any example of the Fair Campaign Practices Act applying to an Indian tribe or tribal official. SFF does not dispute that Mr. Wasserman acted entirely in his Tribal capacity and within the scope of his Tribal authority. SFF's inadequate legal arguments and factual concessions confirm that the complaints against Mr. Wasserman must be dismissed. "Sovereign immunity extends not only to the tribe itself, but also to tribal officers and tribal employees, as long as their alleged misconduct arises while they are acting in their official capacity and within the scope of their authority." *Young v. Duenas*, 164 Wn. App. 343, 349, 262 P.3d 527, 531 (2011).

Thank you for your consideration. As SFF's latest complaint makes abundantly clear, SFF is engaged in a multi-pronged political attack that has little to do with the Fair Campaign Practices Act or the PDC. Mr. Wasserman did not violate the law; rather he simply assisted with educating the public that agricultural pollution is often harmful to salmon and the Tribe's treaty rights. For the reasons stated in this and our December 1, 2016 letter to you, SFF's complaints have no merit and should be dismissed.

Very truly yours,

Brian Chestnut
Wyatt Golding