

What's Upstream has until Dec. 1 to answer new allegation

Save Family Farms organization expands its complaint

By DON JENKINS
Capital Press

The Washington Public Disclosure Commission has extended until Dec. 1 the deadline for What's Upstream to answer allegations by a farm group that it broke the law by failing to report its federally funded political activities.

The PDC previously had expected a response by Oct. 17, but pushed back the deadline after Save Family Farming leveled more allegations, an agency spokeswoman said Tuesday.

The farm group complained in September that What's Upstream failed to register as a grass-roots lobbying organization trying to influence legislation by appealing to the public.

Save Family Farming amended the complaint Oct.



Courtesy of Save Family Farming

An advertising sign on a Whatcom County, Wash., transit bus promotes an Environmental Protection Agency-funded campaign to get the state Legislature to mandate 100-foot buffers between all farm fields and waterways. A group of farmers has complained to the state that the campaign constituted lobbying and political activities.

14, claiming that What's Upstream also should have registered as a political committee planning a ballot initiative.

The farm group, in a letter to the PDC, cited newly released Environmental Protection Agency records as the basis for the new complaint.

The complaints stem from

the use of federal money by the Swinomish Indian tribe, Northwest Indian Fisheries Commission and several environmental groups to lobby for stricter regulations on farming in Washington.

The EPA funded the media campaign between 2011 and 2016 through a grant to the

fisheries commission.

The EPA withdrew its support last spring after coming under fire from some federal lawmakers.

The EPA's inspector general is auditing how the fisheries commission and the tribe spent the funds, which potentially totaled about \$655,000, ac-

ording to EPA records.

The tribe contracted with Seattle lobbying firm Strategies 360 to poll voters and craft a media campaign. The What's Upstream website was revised shortly before the 2016 Legislature to urge the public to write lawmakers in support of mandatory 100-foot buffers between farm fields and waterways.

EPA records show that the tribe's environmental policy director, Larry Wasserman, proposed using EPA funds in 2013 to run a ballot initiative and that federal money already had been spent testing messages to sway voters.

EPA officials had concerns about the proposal, and Wasserman dropped the idea, according to EPA records.

Save Family Farming alleges that What's Upstream should have disclosed its political activities to the state no later than 2013.

The farm group's complaint also named Strategies 360 and EPA Northwest Administrator Dennis McLerran, though the PDC has named Wasserman as the only respondent.

Oregon irrigation district urges dismissal of water lawsuit

By MATEUSZ PERKOWSKI
Capital Press

The Westland Irrigation District in Northeast Oregon has asked a federal judge to dismiss a lawsuit accusing it of cheating smaller growers out of water.

In June, seven farms ranging from about 60 acres to 800 acres filed a complaint alleging the district stole their water to benefit three operations with more than 5,000 acres.

During oral arguments on Oct. 18, attorneys for the district told U.S. District Judge Michael Simon in Portland, Ore., that the lawsuit belongs in state court, not federal court.

"They've failed to exhaust the underlying state remedies that would make their claim ripe in federal court," said Nicole Hancock, attorney for Westland.

The hearing focused on jurisdictional issues rather than the merits of the complaint, which claims the district used fraudulent accounting to make water available to the larger operations at the expense of the smaller growers, who have senior water rights.

The lawsuit belongs in state court because it deals with interpretations of Oregon contract law and water law, said Hancock. "It's going to be a combination of those."

Julie Weis, attorney for the plaintiffs, said it would be more efficient to resolve the case in federal court, particularly since filing a new lawsuit in state court may drag the dispute into the 2017 irrigation season.

The lawsuit belongs in federal court because it will likely entail water contracts with the U.S. Bureau of Reclamation and the impact of the Endangered Species Act on water allocation, said Michael Haglund, attorney for the plaintiffs.

"There may well be intersections with federal law in this case," Haglund said.

The judge signaled that he's inclined to rule the lawsuit belongs in state court, since the case doesn't neatly meet the legal standards for trying it in federal court.

Though he does have the authority to make an exception, there would need to be a valid reason — other than his personal preference, said Simon. "That's no way to run a legal system."

It also wouldn't make sense to try the case in federal court only to later refer a question of law to the Oregon Supreme Court, he said.

Simon said he expects to rule on the jurisdiction issue by mid-November or early December.

If the plaintiffs are worried about delay, they can in the meantime file a state lawsuit against the district, Simon said. If he decides the case belongs in federal court, the state lawsuit can then be dismissed.

"That will have absolutely no bearing on what I do here," he said.

Agency too slow on H-2A applications, farm labor director says

By DAN WHEAT
Capital Press

OLYMPIA — A federal agency involved in processing H-2A visas for foreign farmworkers to harvest U.S. crops remains uncooperative in making that process work, the director of a farm labor organization says.

The U.S. Citizenship and Immigration Services (USCIS) "was unable to substantively answer questions" and only provided a generic department email address at an Oct. 12 conference in Dallas, Texas, said Dan Fazio, director and CEO of WAFLA, formerly the Washington Farm Labor Association.

The conference was offered by the departments of State, Labor and Homeland Security, all involved in approving and issuing H-2A visas. USCIS is part of Homeland Security.

Capital Press did not get a reply from USCIS when asked for a comment.

A State Department official pledged to make H-2A work smoothly. Labor and Customs and Border Protection explained what they do and provided contact information, but three USCIS officials refused to provide any contact information other than the generic email address, Fazio said.

He said he presented a letter outlining the agency's inability to process H-2A applications and asked for the name of someone with whom to follow up. He was given no name.

In his Oct. 3 letter to USCIS officials Donald Neufeld and Maria Odom, Fazio requests a Dec. 5 or 6 meeting with them and said in past years the agency was able to process H-2A applications on time and with few errors.

That changed this year with



Dan Wheat/Capital Press File

Francisco Trinidad, an H-2A-visa foreign guest worker, thins Gala apples at Zirkle Fruit Co.'s CRO Orchard south of Rock Island, Wash., last summer. WAFLA, an organization that helps growers apply for foreign H-2A workers, says one federal agency delays applications.

delays of more than six weeks, Requests for Evidence (RFE) issued in error and no response to inquiries from applicants or members of Congress, Fazio said.

The most serious problem, he wrote, is the agency won't communicate by email or telephone, only by regular mail.

H-2A workers were delayed for a blueberry grower by an RFE questioning whether blueberry harvest is seasonal work, Fazio said. The grower, "one of the largest blueberry producers in the world," was

aided by his access to a "powerful" lobbyist but average employers lack that access, he said.

The "saddest" case was an Oregon grower who lost millions of dollars in high-value fruit because USCIS would not approve the transfer of H-2A workers from Washington in a timely manner, Fazio said.

He did not identify either grower.

WAFLA helped approximately 200 employers hire 9,000 H-2A workers this year. They were mostly in Washington but also in Oregon, Idaho, California, Nevada and Michigan.

Obtaining the visas requires working with four federal agencies and, in Washington, two state agencies.

Delays also occurred in 2015, when the State Department said it had computer problems printing visas.

The Department of Labor is required by regulation to decide H-2A applications at least 30 days before the applicant's date of need but there is no similar requirement for USCIS, Fazio said.

USCIS has a two-week goal but in many cases with WAFLA it took four weeks or more, guaranteeing workers would be late, he said.

The government should want to make H-2A work as an alternative and deterrent to illegal immigration, Fazio said. Employers and workers have to make decisions counting on certainty of work dates, he said.

"It is cruel to routinely cause a very poor farmworker to wait, without a job, when he or she could be earning substantial sums of money to support their family," Fazio wrote in the letter.

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