

EPA regional head denies knowing details about What's Upstream

Agency staff prepared 'talking points' for McLerran

By DON JENKINS
Capital Press

Environmental Protection Agency Northwest Administrator Dennis McLerran has told investigators that he didn't know until last spring about an EPA-funded letter-writing campaign asking Washington legislators to ban farming within 100 feet of waterways, though EPA records released last week show his staff prepared a report several months earlier intended to inform him of the letter.

In a signed declaration to the state Public Disclosure Commission, McLerran stated he didn't learn about a "take action" link to a letter-writing campaign on the What's Upstream website until the site drew complaints from farm groups in March.

On Dec. 7, however, an EPA staff member sent background information for McLerran's use in anticipation that What's Upstream would come up during a multi-agency meeting on water quality hosted by the state Department of Ecology.

The meeting came one week after the Swinomish Indian tribe and several environmental groups launched a revised What's Upstream website. The launch was timed, according to the environmental groups, to influence the 2016 Legislature.

A bullet point in the briefing prepared for McLerran noted the "take action" link.

"As anticipated, the website provides a link enabling readers to send letters to state legislators generally urging stronger regulation to protect water quality from agricultural (pollution)," according to the EPA document.

It's unclear whether What's Upstream was discussed during the meeting, or whether McLerran reviewed the material prepared for him. No records released by the EPA so far show McLerran



Courtesy of Environmental Protection Agency
Environmental Protection Agency Northwest Administrator Dennis McLerran stands on a beach in Seattle during a 2015 Earth Day cleanup and holds a sign showing a Twitter hashtag the EPA used to promote its new Waters of the United States rule. McLerran has declared he didn't know about the What's Upstream letter-writing campaign until spring of 2016.

received the material directly.

McLerran did not respond to an email asking for clarification. EPA spokesmen also did not provide clarification.

An Ecology spokeswoman said the department has no notes from the Dec. 10, 2015, meeting.

She described the meeting as a "very high-level discussion" among top administrators from state and federal agencies.

The EPA talking points for that meeting were among dozens of emails the agency released Dec. 21 in partial response to a Freedom of Information Act request by Save Family Farming.

The group's complaint initiated the PDC's probe into whether the tribe or the EPA, or both, violated state disclosure laws by failing to register What's Upstream as a lobbying organization.

Save Family Farming director Gerald Baron said Dec. 22 that the newly released EPA records appear to conflict with McLerran's statement to the PDC.

The "take action" link is

at the center of allegations by Save Family Farming and some federal lawmakers that EPA funds were used for grass-roots lobbying. The tribe has removed the link.

The newly available records reinforced previous disclosures that although EPA staff members questioned the accuracy of the tribe-directed campaign, EPA lawyers took the position that the agency could not dictate the campaign, even though it was funded by an EPA grant to the Northwest Indian Fisheries Commission.

The records also show that the EPA anticipated the website would be controversial, and staff members didn't want McLerran to be caught off-guard.

Washington state EPA Director Lucy Edmondson asked the agency's Puget Sound intergovernmental coordinator, Lisa Chang, to prepare the talking points for the Dec. 10 meeting, in an email that referred to the EPA's environmental cleanup director, Dan Opalski.

"Dan O. suggested that

Dennis could use some background on the Swinomish Tribe's 'What up stream.com' campaign/program and that you could provide some background/talking points on that," Edmondson wrote.

The talking points written by Chang reviewed the history and status of the project. "The final website will likely be controversial; an earlier version of the website which did not even include the letter to state legislators caused unease in the agricultural community in the Skagit Basin," according to one point.

Another point noted that the tribe had proposed in late 2013 using EPA funds to run an initiative to restrict farming, and that the EPA's Office of Regional Counsel found that EPA funds could be used that way.

McLerran, in his PDC declaration, stated that he told his staff to relay to the tribe that using EPA funds for a ballot measure was "inappropriate."

The tribe eventually dropped the plan, though EPA records released so far do not indicate whether McLerran



Don Jenkins/Capital Press

A What's Upstream billboard shows cows in a stream.

influenced that decision. The tribe's environmental policy director, Larry Wasserman, did not respond to a request for comment.

McLerran's declaration provides his first comments to be made public on What's Upstream since he wrote a federal lawmaker in May describing the agency's role as focused on "technical input."

McLerran also declared to the PDC that he talked with Wasserman in July 2015 in hopes that the campaign would be "toned down."

McLerran said he had no more contact with the tribe or fisheries commission about What's Upstream until the campaign raised its profile by putting ads on buses and billboards, angering farm groups and some federal lawmakers.

"I had no personal knowledge of a 'take action' button, billboards or bus ads until staff informed me of their existence in spring 2016," McLerran declared to the PDC.

Previously released EPA records show that other EPA officials were aware of the tribe's plan for a "take action" link as early as July 2015.

Tribe officials agreed to take down the billboards, which promoted the website and accused farmers of being unregulated polluters. McLerran said the tribe rejected his request to take down the website.

Also on Dec. 22, the EPA sent the PDC a letter arguing that the state agency has no jurisdiction over McLerran

acting in his capacity as a federal official. The argument echoes the Swinomish tribe's position that the PDC has no authority over how a tribe spends its money.

PDC Director Evelyn Fielding Lopez said the agency normally doesn't regulate federal agencies, but added, "Even a federal agency doesn't get to do just whatever it wants to because it's a federal agency."

The EPA also argues that the PDC should dismiss the complaint against McLerran because he did not personally provide any funding for lobbying or direct the spending. Lopez said that may be persuasive. "I have questions whether Mr. McLerran was involved in any grass-roots lobbying," she said.

The PDC has asked Seattle lobbying firm Strategies 360 to respond to Save Family Farming's complaint by Dec. 27. The tribe hired the firm to create the media campaign.

Lopez said she hopes the PDC will make a decision on whether to take enforcement action by the end of this week.

A separate probe by the EPA Office of Inspector General into whether What's Upstream was a misuse of federal funds has yet to be completed.

It remains unclear how much EPA spent on What's Upstream. Previously released records suggest the tribe received some \$655,000. The EPA said it has cut off funding, but has not accounted for the money it distributed.

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