

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint Against MONTANANS FOR CLEAN WATER, NORTHERN PLAINS RESOURCE COUNCIL, and PUBLIC EDUCATION FOR WATER QUALITY PROJECT))))))	SUMMARY OF FACTS AND STATEMENT OF FINDINGS
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Jerome Anderson, Campaign Director for Montanans for Common Sense Water Laws - Against I-122, (Complainant), filed a complaint against Montanans for Clean Water (MCW), the Northern Plains Resource Council (NPRC) and the Public Education for Water Quality Project (Project). MCW was the ballot issue committee organized to promote Initiative 122 (I-122) in the 1996 general election. The complaint contains five separate allegations that MCW, NPRC and the Project violated Montana campaign finance laws as follows:

Claim 1

The Complainant alleges that MCW distributed materials in a folder labeled "Montanans for Clean Water." These materials allegedly were delivered both door-to-door as well as disbursed to audiences by MCW. The Complainant alleges that some of the materials included in the folder did not contain the disclaimer required under Montana's campaign finance laws.

Claim 2

The Complainant alleges that MCW did not report the purchase or receipt of the materials described in Claim 1 as a contribution from the Project.

Claim 3

The Complainant alleges that the Project did not educate; rather, it advocated passage of I-122. The Complainant alleges that the Project did not register as a political committee, nor did the

Project file any incidental political committee reports disclosing the contributions it made on behalf of the MCW campaign. The Complainant further alleges that MCW and the Project exchanged campaign information and finances in an effort to promote the passage of I-122.

Claim 4

The Complainant alleges that NPRC did not timely report its contributions in support of I-122 to the office of the Commissioner of Political Practices.

Claim 5

The Complainant alleges that NPRC did not disclose the individual sources of the funds contributed to support I-122 as required by 44.10.411, Administrative Rules of Montana (ARM).

SUMMARY OF FACTS

1. MCW Campaign Manager and Deputy Treasurer Andrea Stander stated that numerous materials produced by the Project were disseminated at meetings and door-to-door by MCW. She stated that the materials were distributed to anyone who was interested or wanted more information. MCW did not place a disclaimer on the materials. Andrea Stander does not know how many copies were distributed.

2. The Project printed the following on a separate sheet of paper:

“These informational materials were obtained from:
The Public Education for Water Quality Project
The Project is sponsored by a consortium of citizen conservation groups who have a long standing interest in protecting Montana’s water quality through public education and citizen action.
The Project provides these informational materials on request.
For more information about The Public Education for Water Quality Project please contact any of the participating organizations.”

3. Various materials were produced by the Project. MCW had access to all of these materials and provided them to citizens in the course of the campaign. The Project produced numerous "white papers" as well as two "fact sheets" and a tabloid. In addition to MCW disbursement, the Project also disbursed the materials. The materials were not always disbursed in a packet.

4. MCW did not report the receipt of any Project materials as campaign contributions from the Project. In the course of the entire I-122 campaign, MCW did not report receipt of any campaign contributions from the Project.

5. The Project developed materials referred to as "white papers" specifically for use in the campaign. These materials addressed specific arguments made by the opponents of I-122. The materials were entitled "1995 Changes to the Montana Water Quality Act," "Impacts to Surface and Ground Water from Ten Montana Metal Mines," "Effects of Metals on Aquatic Life," "Wastewater Treatment Methods for Base and Precious Metal Mines," and "Environmental Protection and Economic Prosperity."

6. The Project also developed two "fact sheets" and a "tabloid." The tabloid was entitled "Clean Water: It's More Precious Than Gold." A fact sheet entitled "Water Quality and Hard Rock Mining" was produced in July of 1996. The emphasis in these publications was hard rock mining and water quality impacts caused by mining. Sections in these publications entitled "what can be done" detailed the changes made to Montana's water quality laws by the 1995 Legislature and called for the same action proposed in I-122.

7. The Project was run by a steering committee comprised of seven individuals representing seven organizations. The same individuals represented the same organizations on the

MCW board. All seven individuals held positions on the MCW “working” committees. Campaign information was freely exchanged between the MCW board and the Project Steering Committee. The following chart demonstrates the interlocking relationships of the two boards.

Individual	MCW Board	Project Board	MCW Cmte.	Organization
Teresa Erickson	yes	yes	fundraising	NPRC
Jim Jensen	yes	yes	fundraising	MEIC
Tony Jewett	yes	yes	fundraising	MT Wildlife Fed.
Bob Decker	yes	yes	media/ed./mes.	MT Wilderness Assn.
Bruce Farling	yes	yes	legal/tech.	MT Trout Unlimited
Meg Nelson	yes	yes	fundraising	ClarkFork/Pend-Oreille (also a field captain & field trainer)
Janet Ellis	yes	yes	fundraising	MT Audubon Council

8. The Project existed for the primary purpose of promoting the I-122 effort. The Project is a “nonentity” for organizational purposes. The Project refers to itself as “a collaborative effort” of the seven organizations represented on both the MCW board and the Project Steering Committee. The Project came into existence after the 1995 Legislature made changes to water quality laws. NPRC commissioned a poll by Celinda Lake of Lake Research to “identify potential responses to the 1995 Legislature’s weakening of water quality laws.” The poll also “gave NPRC insights into the viability of initiative or referendum as potential responses for clean water advocates.”

9. A Project “description” document was produced in September of 1995. The initial polling was paid for by NPRC directly. The polling, focus groups and costs associated with the survey totaled \$24,349.60 for calendar year 1995. The first expenditures took place in May of 1995,

approximately one month after the 1995 Legislature adjourned. 1996 Project expenditures totaled \$138,500 as of November of 1996. The Project spent more than \$68,000 for television advertising which ran in September and October of 1996.

10. A full-time employee, James Hartung, was hired from May 1996 through December 1996 as the Project Coordinator. He was paid directly by NPRC. Before being hired to serve as Project Coordinator, Mr. Hartung was a member of MCW's Yellowstone County Steering Committee. The NPRC building housed the Project office. NPRC was the Project financial agent.

11. The Project also advertised for an intern for the period of June through September 30, 1996. The job description for the intern position stated that the intern must have "campaign organizing skills" and would "register eligible voters to vote in time for the November 5 general election."

12. The Project Steering Committee met in early October of 1996 to decide how to spend the last of the Project funds. An agenda memo for the meeting was written by Teresa Erickson and sent to all Project Steering Committee members. The agenda included the following:

"Following are the most obvious options for putting the money to work:

1. More tv with the ad we have
2. Buy radio time with a soft message
3. Pay a telemarketing firm to make persuasion calls, calling our petition list, the merged membership lists and any other lists we have. I have a bid from a company that works with MCSSR for .48 per completed call. I estimate this would cost around \$20,000.
4. Do a direct mail to the aforementioned lists as a persuasion piece on clean water.
5. Organize a Get out the vote
6. Print another tabloid and distribute via helicopter"

13. The Project used the same advertising and campaign planning firm as the MCW campaign. This firm assisted in analyzing the poll results and assisted in the development of the

Project's message and commercials for television broadcast. The television stations required the Project to add disclaimers to the commercials purchased by the Project. The Project TV commercials ran in September and October of 1996, during the heat of the I-122 campaign.

14. Teresa Erickson wrote a memo dated November 20, 1996 to the Project Steering Committee. The memo outlined the agenda for the upcoming meeting. The three items on the agenda were to determine a strategy on the Anderson complaint, decide the future of the Project, and to determine how to spend remaining Project funds. Regarding the Project's future, Ms. Erickson states: "We may want to keep some PEWQ structure if for no other reason than to not fall into the trap of proving that we only existed for the initiative." She further states, "Should this thing blow up into a huge legal fight, and since we are all somewhat implicated, we will need to figure out how to finance a defense."

15. The Project Steering Committee members and organizations were familiar with the campaign finance laws and the requirements for reporting and disclaimers. In fact, individual members of the Project Steering Committee had also received campaign finance and reporting training.

16. The Project did not register as a political committee and did not file incidental political committee reports.

17. I-122 was in the process of being qualified for the ballot when the Project was formed. NPRC spearheaded both the Project and the development of MCW. Andrea Stander, Campaign Manager and Deputy Treasurer, was an NPRC employee prior to being hired as the Campaign Manager for MCW. NPRC drafted a campaign document in August of 1995 indicating an intent to form the Project.

18. MCW failed to timely report contributions made during the I-122 campaign. According to the C-4 reports filed with the Commissioner of Political Practices, MCW under-reported the contributions it received from numerous organizations including NPRC. The following chart describes the reporting inconsistencies found in the process of investigating this complaint.

<u>ORGANIZATION</u>	<u>C-4 TOTALS</u>	<u>MCW C-6 TOTALS</u>
Clark Fork-Pend Oreille Coalition	10/24 direct \$5,000	11/01 \$7,523.15 I-K
	10/24 in-kind \$7,523.15	11/01 \$5,000
	11/15 direct \$1,000	11/26 \$1,000
	11/15 in-kind \$1,402.44	11/26 \$1,402.44 I-K
	01/27 in-kind \$4,439.02	03/10 \$4,439.02 I-K
	Total \$ 19,364.61	Total \$ 19,364.61
	*03/18 date of first expenditure	
Montana Audubon	10/24 direct \$1,000	07/10 \$ 500
	10/24 in-kind \$1,629.90	10/22 \$ 500
	11/21 in-kind \$ 504.32	10/22 \$2,129.90 I-K
		03/10 \$ 504.32 I-K
		03/10 \$ (-500)
	Total \$ 3,134.22	Total \$3,134.22
	*03/30 date of first expenditure	

	<u>C-4 Totals</u>	<u>MCW C-6 Totals</u>
Montana Council Trout Unlimited	10/30 direct \$15,000	04/10 \$ 5,000
	10/30 in-kind \$ 500	10/22 \$10,000
	11/21 in-kind \$ 111	11/26 \$ 111 I-K
	Total \$15,611	Total \$15,111

*04/01 date of first expenditure

Montana Environmental Info. Cntr.	10/07 in-kind \$ 4,917.06	09/10 \$4,917.06 I-K
	10/07 in-kind \$ 237.45	10/22 \$2,767.24 I-K
	10/11 in-kind \$ 2,529.79	10/22 \$1,500
	10/23 direct \$ 1,500	11/01 \$4,022.22 I-K
	10/23 in-kind \$ 2,522.21	11/26 \$1,821.54 I-K
	11/13 in-kind \$ 1,821.54	12/19 \$ 600.34 I-K
	11/26 in-kind \$ 600.34	03/10 \$ 696.12 I-K
	12/18 in-kind \$ 696.12	
	Total \$14,824.51	Total \$16,324.52

*03/04 date of first expenditure

Montana Wilderness Association	09/20 in-kind \$3,180.96	09/10 \$3,180.96 I-K
	10/23 in-kind \$2,862.07	10/22 \$2,862.07 I-K
	11/08 direct \$ 250.00	11/26 \$ 250
	11/25 in-kind \$ 3,074.56	
	Total \$ 9,367.59	Total \$ 6,293.03

*02/29 date of first expenditure

	<u>C-4 Totals</u>	<u>MCW C-6 Totals</u>
Montana Wildlife Federation	10/16 in-kind \$ 1,193.12	10/22 \$1,193.12 I-K
	10/23 in-kind \$ 970.17	11/01 \$ 265.97 I-K
	11/25 in-kind \$ 287.86	11/26 \$ 704.20 I-K
		12/19 \$ 287.86 I-K
	Total \$ 2,451.15	Total \$ 2,451.15

*06/01 date of first expenditure

Northern Plains Resource Council	10/24 direct \$15,000	06/10 \$5,530.62 I-K
	10/24 in-kind \$17,480.12	07/10 \$1,886.59 I-K
	11/21 in-kind \$11,270.34	08/13 \$2,505.83 I-K
	02/14 in-kind \$ 1,268.48	10/22 \$15,000
	03/11 in-kind \$ 1,255.17	10/22 \$7,557.08 I-K
		11/26 \$8,018.47 I-K
		03/10 \$1,986.02
	Total \$46,274.11	Total \$42,484.61

*02/15 date of first expenditure

In addition, the following organizations reported the following:

Greater Yellowstone Coalition	\$17,155.63	in-kind through 10/31
Greater Yellowstone Coalition	\$ 5,665.55	in-kind 11/15 through 11/22
Stream Works, Inc.	\$ 25.00	direct on 10/24
Flathead Mt. Wilderness Assn.	\$ 71.44	in-kind through 11/13

Eastern Wildlands Mt. W. Assn.	\$ 146.30	in-kind through 11/14
Island Range Mt. W. Assn.	\$ 119.74	in-kind through 11/01

MCW's C-6 report submitted on November 26, 1996 reports total in-kind contributions from the Greater Yellowstone Coalition of \$8,193.55. That report does not list contributions from Stream Works, Inc., Flathead Chapter Montana Wilderness Association, Eastern Wildlands Chapter Montana Wilderness Association, or Island Range Chapter Montana Wilderness Association.

19. It appears that at least \$22,354 of contributions were not reported by MCW. An additional \$704 of contributions was not timely reported on MCW's October 31, 1996 C-6 report.

20. The office of the Commissioner of Political Practices started sending blank C-4 report forms to all incidental political committees on September 10, 1996. NPRC filed its first C-4 report on October 24, 1996. The report contained a list of all the contributions made to MCW from NPRC from February of 1996 through September 30, 1996. NPRC's reports did not disclose the individual sources of its funds.

STATEMENT OF FINDINGS

Claim 1

Section 13-35-225, Montana Code Annotated (MCA), requires disclaimers on all campaign materials. The statute in pertinent part states:

Election materials not to be anonymous. (1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting stations, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must

clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer.

The complaint alleges that MCW failed to provide appropriate disclaimers as required by the above statute. MCW distributed materials produced by the Project which were designed for use in the campaign. MCW did not place disclaimers on the materials.

The Project made an attempt to place a disclaimer of sorts on some of the materials. However, the Project did not place disclaimers containing all the necessary information on any materials, and only partial disclaimers were included on some of the materials. The burden of providing an appropriate disclaimer is borne by the person who finances the communication. In this case, the burden of providing disclaimers falls on the Project, NPRC as its fiscal agent, and/or the Project's individual members. The parties have stated that the Project designed and provided the materials to MCW for distribution. The disclaimer should have been placed on each individual communication. Further, the disclaimer should have provided the address of the Project as well as the full Project name.

The Project should have placed appropriate disclaimers on the materials provided to MCW. In addition, MCW should not have disbursed materials without a disclaimer. I find that the Project and MCW violated section 13-35-225, MCA.

Claim 2

The second claim made in the complaint is that MCW did not report the purchase or receipt of the materials provided by the Project as a contribution to the campaign. A review of submitted campaign finance reports reveals that MCW did not report any expenditures made by the Project in support of I-122.

Section 13-37-225, MCA, provides: "Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on behalf of a candidate or a political committee." Montana law imposes specific requirements for disclosure of contributions and expenditures in 13-37-226, 227, 228 and 229, MCA.

The threshold issue is whether or not the materials produced by the Project and provided to MCW constitute a contribution or expenditure in support of I-122. The definition of a contribution is found at 13-1-101(3), MCA. Contribution is defined as "an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election." The definition of an expenditure is found at 13-1-101(7), MCA. Expenditure is defined as "a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election." Certainly, the materials provided by the Project had value. The Project commissioned various individuals to provide the research and write the "white papers." The Project also planned the writing and distribution of the "fact sheets." In addition, the Project produced a "tabloid." In excess of 100,000 copies of these materials were produced.

I conclude that the purpose of these materials was to influence voters regarding I-122. While the materials contain some educational and technical components, the main purpose for developing the materials was to respond to the opponent's arguments against I-122 and to persuade voters to vote for the initiative. The "white papers" were planned for use in the I-122 debates. According to the Project financial statement for 1996, these materials were produced at a total cost of \$21,200. This amount does not reflect any administrative time allocated to production of these documents. Therefore, the real cost may be higher than reflected in the Project financial statement.

These materials were a contribution to the I-122 campaign and should have been reported as such. MCW did not report these contributions as required by law. I conclude that MCW was aware of the contributions, knew of its duty to report the contributions, yet failed to do so, thus violating the most basic of Montana's campaign finance laws.

Claim 3

The complaint alleges that the Project did not merely educate, but rather advocated passage of I-122. The complaint further alleges that the Project was a political committee and did not register as such, or provide appropriate reporting of its activities.

The facts reveal the following:

First, the Project came into existence only after the 1995 Legislature changed the laws governing water quality. The Project was formed after NPRC commissioned a poll to determine the feasibility of an initiative. The original campaign document details the planning of the Project and the proposed use of "soft" money during the campaign. From the onset of planning, the Project was a component of the overall MCW campaign.

Second, the Project hired full-time individuals during the heat of the campaign and those positions were terminated shortly before and after the November 1996 general election.

Third, the same individuals and organizations who comprised the Project Steering Committee also sat on the MCW board. The Project and MCW steering committee membership was identical for both groups. The makeup of each board is indistinguishable from the other. Clearly, campaign information was readily shared and discussed.

Fourth, the Project was created during the I-122 process and was planned to end after the November 1996 election. One member advised in writing that even though the Project was originally

going to end in December of 1996, the Project should stay in existence in order "not to fall into the trap of proving that we only existed for the initiative." This memo was written after the Anderson complaint had been filed.

Fifth, the Project and MCW hired the same agency to coordinate the campaign, provide political information and coordinate a message.

Sixth, the documents produced by the Project for public distribution dealt almost exclusively with water quality problems related to hard rock mining. These documents were produced in July, August and September of 1996 and distributed to MCW, the collaborating members of the Project and the public during the heat of the I-122 campaign. The Project's "tabloid" and "Fact Sheet 1" detailed the changes made to Montana's water quality laws and advocated a number of revisions to the law, including restoring Montana's Water Quality Act to pre-1995 status, eliminating mixing zones for mine discharges and other recommendations contained in I-122.

Seventh, the Project involved itself in planning "get out the vote" campaigns, contemplated contracting for \$20,000 of persuasion phone calls in October of 1996, and spent more than \$68,000 of television advertising proclaiming the importance of clean water during September and October of 1996. The ads were so persuasive that the television stations running the ads required that typical political disclaimers be included before airing. The focus of the Project was to persuade the public about the "clean water" message during the I-122 campaign. The Project was a well planned, highly organized arm of the MCW campaign effort. The Project produced large amounts of materials and placed numerous television ads during the final weeks of the campaign. In total, the Project spent over \$138,000 during 1996, none of which was reported by the Project, its individual members or MCW.

I conclude that the Project was formed to influence the outcome of an election. The expenditures made on behalf of the I-122 campaign should have been reported by MCW, the Project, or the individual collaborating organizations. The Project, MCW and the individual organizations all had knowledge of Montana's campaign laws. The people of this state have a right to know who is financing a campaign. MCW reported spending more than \$350,000 on the I-122 campaign. The Project spent at least an additional \$162,000 in 1995 and 1996, none of which was reported by MCW, the Project or the collaborating organizations.

Claim 4

The investigation revealed numerous reporting discrepancies between contributions reported by individual organizations and MCW. After reviewing the campaign finance reports, it is evident that MCW did not report in excess of \$22,000 of contributions to the I-122 campaign. Another \$704 of contributions was not timely reported as required by law. MCW had an obligation to timely report every contribution to the campaign. MCW failed in its duty to accurately and timely report the contributions it received in the course of the campaign. MCW violated the reporting requirements of sections 13-37-225, 226, 227, 228 and 229, MCA.

NPRC began filing incidental committee reports using the C-4 form in October 1996. The first report contained all of the expenditures made by NPRC on behalf of MCW from February 1996 through September of 1996. While it is true that NPRC's filing of the C-4 report does not technically comport with the administrative rule, it cannot be considered a violation. My office is currently conducting an administrative review of C-4 reporting requirements. I acknowledge that there was some confusion about when incidental committee expenditures were to be reported during the 1996 campaign. Blank C-4 forms were distributed to incidental committees in September of 1996. NPRC

attempted to comply with the incidental committee reporting requirements upon receipt of the September 1996 notice. Therefore, I conclude that NPRC did not violate the C-4 reporting requirements for those contributions and expenditures reported to my office.

Claim 5

The complaint alleges that NPRC should have revealed the sources of its funds as required in Rule 44.10.411, Administrative Rules of Montana (ARM). That rule states:

Incidental Political Committee, Filing Schedule, Reports (3)(b) If the incidental committee is an organization which has as its principal source of income the collection of dues, fees, subscriptions, or other sources of funds of a uniform amount from every member, it need not report the individual sources of the funds, unless the result of the following calculation equals more than \$25 per person.

A review of NPRC's annual reports for the previous five years indicates that the majority of its income comes from grants and donations, not memberships. Therefore, NPRC was under no obligation to report the individual sources of its funds. I conclude that NPRC did not violate Rule 44.10.411, ARM.

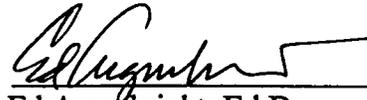
CONCLUSION

Based on the preceding findings and facts, there is substantial evidence to conclude that Montanans for Clean Water, the Public Education for Water Quality Project and the organizations that collaborated to form the Project, NPRC, the Montana Environmental Information Center, the Montana Wildlife Federation, the Montana Wilderness Association, the Montana Council of Trout Unlimited, the Clark Fork-Pend Oreille Coalition and the Montana Audubon Council, violated Montana campaign finance reporting and disclosure laws.

I find that Montanans for Clean Water, the Public Education for Water Quality Project and the organizations that collaborated to form the Project, NPRC, the Montana Environmental

Information Center, the Montana Wildlife Federation, the Montana Wilderness Association, the Montana Council of Trout Unlimited, the Clark Fork-Pend Oreille Coalition and the Montana Audubon Council, intentionally or negligently violated Montana's campaign finance laws and rules and that a civil penalty under section 13-37-128, MCA, is warranted.

Dated this 29th day of April, 1997.



Ed Argenbright, Ed.D.
Commissioner