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Liability Analysis (Panesko to Beneski, 03/25/2025) [attachment 8]

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Liability Analysis_CONFIDENTIAL.pdf



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MEMORANDUM

DATE: March 25, 2025

TO: Kristin Beneski, Governor's Chief Legal Counsel
Office of the Governor

FROM: Joe Panesko, Senior Counsel
Public Lands and Conservation Division

SUBJECT: **Liability Analysis**

I. INTRODUCTION & ISSUE PRESENTED

This memo follows up on a prior memo dated March 20 that focused on the Governor's legal authority to remove appointees. This memo details inappropriate conduct of certain Fish and Wildlife Commissioners, revealed through documents found on the agency laptop turned in by former Commissioner Tim Ragen. I am writing this memo on my own behalf as the assigned legal counsel to the Fish and Wildlife Commission, with the support of WDFW senior management.

II. SUMMARY

By regularly meeting with, corresponding with, and implicitly "partnering" with outside advocacy groups who are active litigants against WDFW, Commissioners Lorna Smith and Melanie Rowland have engaged in a pattern of behavior that violates the Commission's Rules of Procedure. Separately, they have engaged in irresponsible record management behaviors that expose WDFW to significant financial liability in a pending public records lawsuit. Finally, Commissioner Smith has submitted extensive compensation claims for time spent as a commissioner that are highly questionable.

III. BACKGROUND

For numerous reasons which I will not take time to document herein, I and WDFW senior management have had concerns about conduct of certain Fish and Wildlife Commissioners over the past four years. I never pursued action previously because I never had any concrete evidence proving conduct that "crossed the line." This changed with two things in the past month. First, former Commissioner Ragen turned in his work laptop, which contained extensive records that

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had never been seen by WDFW staff previously. These records document extensive inappropriate engagements between multiple commissioners and outside advocacy groups and their legal counsel who have multiple active cases against WDFW.

The second new development prompting this memo was a new public records lawsuit filed by U.S. Sportsmen's Alliance Foundation against WDFW and the commissioners in January 2025. The underlying record request had been submitted in September 2023, and it sought broad categories of correspondence to and from commissioners over a broad span of time. The lawsuit expressly admits that Sportsmen's record request was motivated by a belief that commissioners were discussing business and counting votes behind closed doors, in violation of the Open Public Meetings Act. Despite the request being open for over 18 months, WDFW and commissioners have produced very few records, prompting the lawsuit which argues unreasonable delay in responding. The AAGs defending WDFW in this new case have discovered that commissioners Lorna Smith and Melanie Rowland have delayed providing any records for over a year, and only now have they searched for and produced records under threat from the AAGs defending the case.¹ WDFW has also found extensive records on Tim Ragen's laptop that document certain commissioners extensively using personal emails and cell phone texts to conduct agency business in 2022-2024 timeframe. Many of these discovered records are likely responsive to multiple public record requests received by the Department over the past few years, yet they have never previously been provided to the Department by commissioners. WDFW is facing significant financial exposure in the Sportsmen's request due, in part, to the delays and refusals of Lorna Smith and Melanie Rowland to produce responsive records.² WDFW faces additional liability if other recent record requesters pursue litigation.

IV. ANALYSIS

A. **First Concern: Appearance of Some Commissioners Colluding With Plaintiff Advocacy Organizations and Their Legal Counsel in Active Litigation Against the Department**

1. **Prelude: Expectations of commissioner conduct**

Fish and Wildlife Commissioners do not serve in any quasi-judicial capacity, and they do not conduct hearings, so they are not *statutorily* bound by an appearance of fairness principle. Nevertheless, the Commission has adopted Rules of Procedure that bind all commissioners. The rules include these following expectations:

¹ WDFW exposure in this PRA case is not solely attributable to conduct by certain commissioners—there were oversights by other WDFW staff on this particular record request that further exacerbate WDFW's financial exposure in the case. But that is not the focal point of this memo.

² For purposes of brevity, but with no disrespect intended, I will use only the last names of the involved individuals hereafter.

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- “Represent all citizens of the state (who own the resource), not constituents from a particular area or special interest.”
- “Not engage in any activity which gives rise to a conflict of interest or appearance of conflict of interest as a Commission member.”
- “Refrain from using the meeting to further a personal agenda.”

A commissioner’s repeated and intentional disregard of these internal rules would constitute misconduct under the dictionary definition of the term, which includes “intentional wrongdoing: deliberate violation of a rule of law or standard of behavior especially by a government official.”³

2. History of litigation against WDFW litigated by Attorney Claire Davis on behalf of numerous advocacy groups

Davis began filing lawsuits on behalf of various parties against WDFW in 2017-18, with numerous lawsuits challenging WDFW decisions on wolf and bear issues. In 2021, the plaintiffs and topics shifted mostly over to fish and hatchery issues, lead predominantly by Wild Fish Conservancy (WFC), and other aligned groups including Washington Wildlife First (WWF), and The Conservation Angler (TCA). The table shown in Attachment A lists all cases against WDFW since 2017 where Davis was the lead attorney. The table demonstrates that there has always been one or more active cases by Davis against WDFW since 2017. There are four open cases presently.

3. August 2022 meeting incident and the Chinook SEPA case

WFC and TCA sued WDFW in October 2021, alleging that a vote by Fish and Wildlife Commissioners directing the Director and Department to increase hatchery production of Chinook salmon violated SEPA. Davis is the named attorney. Plaintiffs believe producing additional hatchery fish is detrimental to wild fish. WDFW’s effort to increase Chinook hatchery production was directly at the request of a Governor’s Executive Order and the Governor’s Orca Task Force recommendations. WDFW initially succeeded in getting the case dismissed as untimely, but the court then allowed plaintiffs to amend their complaint. WDFW filed additional defensive motions causing plaintiffs to amend their complaint two additional times, constantly shifting their theories, and the case now continues in 2025 with just one remaining claim—a constitutional writ of certiorari.

The Commission was scheduled to address the Department’s proposed budget at a public meeting on August 5, 2022. That budget included hatchery funding, some of which was for the Chinook hatchery increase. In advance of that meeting, plaintiffs wrote a long letter to the full

³ Merriam-Webster Unabridged Dictionary (online) (emphasis added).

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commission in advance of the meeting making numerous arguments about how the hatchery increase was harmful, and the letter directly addressed the legal arguments made in the ongoing litigation. The letterhead included the logos for WFC, TCA, and WWF, even though WWF was not a named party in the litigation. WFC, TCA, and WWF staff, attorney Davis, and numerous other advocates (twelve people total) signed up for “open public input” during the commission meeting on August 5, 2022, and all encouraged the Commission to cut funding to hatcheries. This direct engagement with the Commission over pending litigation was tolerated because it was done during an open public meeting and could arguably be defended under the constitutional right to petition the government.

On August 4, the day before the Commission meeting, Ragen called me with questions about several issues. In that conversation, he revealed to me that he, Rowland, and Smith had met privately the previous day with the litigants in the Chinook SEPA case. He did not identify Davis as one of the participants at the meeting. He also mentioned that those three commissioners were considering making a motion to amend the budget to pull back Chinook production (the exact remedy sought by the litigants). The disclosure of this private meeting between three commissioners and the opposing parties in an active lawsuit against the agency was extremely concerning to me. I discussed with WDFW senior management, with Commission Chair Barbara Baker, with my assigned Deputy Attorney General, and with Ruth Musgrave, Governor’s Policy Advisor. The following paragraph is from a report I submitted to my Deputy AG describing my discussion with the commissioners during executive session about this meeting:

Friday, August 5: I explain during executive session how the public and press could view it as inappropriate for individual Commissioners, as representatives of DFW, to be meeting privately with an active litigant trying to enjoin four years of hatchery actions done by the department to fulfill a 2018 directive of the Commission. I explain that WFC’s litigation practices against the department have, in prior recent cases, included numerous factual assertions and claims which the courts have found to be unsubstantiated and false. I expressed concern that Commissioners could potentially be relying upon unreliable outside information without taking the time to obtain internal legal briefing, or scientific briefing from department biologists, about the issues in the litigation. Two of the three commissioners were unapologetic about attending that meeting (Smith and Rowland). They claim that the meeting did not involve or discuss any part of the litigation (which is very difficult to believe given the context of events and the desired motion to amend the capital budget). They also expressed no reluctance or hesitancy relying upon outside information, including from WFC, in making their decisions.

Ruth Musgrave also expressed grave concerns over the private meeting with opposing litigants, but I am not aware of her taking any substantive action regarding the issue.

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4. The full scope of WFC, WWF, and Davis meetings with certain commissioners revealed

WDFW staff analyzed Ragen's work laptop after he turned it in. They discovered extensive meetings scheduled on his calendar from early 2022, when he was first appointed to the Commission, through 2024. The calendar shows many dozens of private meetings scheduled between multiple commissioners and WFC, WWF, and other animal rights related groups.⁴ The calendar demonstrates a regular pattern of meeting with these groups just prior to public commission meetings (like the one that occurred before the August 5, 2022, meeting as discussed above), and they would then often hold private meetings after the public commission meetings. The calendar shows a scheduled meeting on August 17, 2022, labeled "Hatchery/Commission Follow-up" even though commissioners were warned at executive session on August 5 about the impropriety of privately meeting with opposing counsel and advocacy groups actively litigating against the Department.

More concerning to me as the Commission's legal counsel: the calendar identified opposing counsel Davis as a scheduled attendee at twenty different meetings over a two-year period, all during which she had active litigation in multiple cases pending against the Department. A chart showing the scheduled attendees and listed meeting subject is included as Attachment B. Davis was listed as a scheduled attendee at the August 3, 2022, meeting which is discussed above, although none of the three commissioners admitted to Davis being present at the meeting. Davis is also listed as a scheduled attendee at the follow-up meeting on August 17, 2022. The subjects of the various meetings include high-profile, controversial, and litigation-related topics, such as wolves, hatchery practices, and various rulemaking petitions.

I have a similar concern over two meetings in fall of 2023, where WWF and other groups had filed a rulemaking petition before the Commission regarding cougar management, and Ragen, Rowland, and Smith privately met with the groups before the Commission voted on the petition. Although a Commission vote on a rulemaking petition is not an adjudicative function, it still violates the appearance of fairness rule stated in the Commission's Rules of Procedure for some commissioners to privately meet with the rule petitioners before a public meeting where the Commission votes on the petition. Unsurprisingly, the commissioners who attended these private meetings with the advocacy groups voted in support of the petition.

It is a normal practice of the Commission to start off each monthly meeting with individual commissioners reporting out on any activities they have engaged in while representing WDFW in the past month. Commissioners would normally share when they attended events, or met with interest groups. None of the commissioners who were privately meeting repeatedly with these litigating advocacy groups and their attorney over the past three years ever reported at the

⁴ The meeting invites never included five commissioners at the same time, presumptively to avoid a quorum.

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Commission's public meeting about their private meetings with these advocacy groups. This silence strongly suggests that their conduct with those advocacy groups was intentionally secretive to strategize the implementation of the advocacy groups' goals and objections, which conduct would thus be collusive.⁵

5. Direct communications discovered between Davis and certain commissioners over litigation strategy in the Chinook SEPA case

When WFC and TCA sued WDFW in October 2021, it named only the Department and Director. Over the course of amending the complaint several times, plaintiffs added each of the commissioners individually in the caption. WFC Executive Director Emma Helverson sent a letter to the full Commission on October 6, 2022, expressly stating, "If the agency's attorneys were not directly consulting regarding litigation strategy before, we hope that they are now that you are named parties."

Given that the commissioners were individually named defendants in the case, it was extremely concerning to discover on Ragen's computer two email communications from Davis about the case to Ragen, Rowland, and Smith. The full text of one email is set out here:

Commissioners:

I hope you are getting some rest from the grueling three-day meeting. Attached please find some of the pleadings that I mentioned to you last week, from the ongoing court case brought in King County Court by the Wild Fish Conservancy and The Conservation Angler against WDFW. I am attaching:

1. The latest complaint in the action, which would give you a lot of background on the issue.
2. The briefing on a recent motion to dismiss, in which WDFW management asserts that the Commission has delegated to it the authority to expand hatchery production, such that it never needs to go to the Commission for approval to do so. Some key parts are highlighted.
3. A brief we filed earlier this month asking the court of appeals to look at this case on discretionary review, due to a series of bad rulings from the King County Court and WDFW's blatant evasion of the law.

Please let me know if you would like to discuss or have any questions.

Best,
Claire

This email was sent to the personal email addresses of Ragen, Rowland, and Smith on August 13, 2023, along with attached pleadings that included yellow highlighting calling out the parts

⁵ Collusion: "secret agreement : secret cooperation for a fraudulent or deceitful purpose." Merriam-Webster Unabridged online.

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that Davis criticized in paragraph 2 above. Ragen forwarded this to his work email account on August 15, 2023. Davis sent them a follow-up email on September 8, 2023, proving that the August 13 email was not just a one-off fluke, and strongly suggesting that none of those commissioners told Davis to stop contacting them. The tenor of the communication shows that Davis felt comfortable directly approaching them and criticizing the legal arguments being made by WDFW. That fact that these commissioners engaged with Davis on this level of familiarity, when they were individually named defendants in the case, also suggests these commissioners were colluding with the plaintiffs against the interests of the Department. This conduct grossly violates the Commission's Rules of Procedure.

Unrelated to the Chinook SEPA case, WDFW public records staff recently discovered two emails from Davis to Smith's official WDFW account in 2021 talking about an active lawsuit Davis had filed against the department challenging the 2021 spring bear hunting rules. This earlier communication further supports a pattern of collusion that extends over years. As an attorney, Davis's repetitive private correspondence and meetings with commissioners who were named defendants in active litigation violates Rules of Professional Conduct 4.2 (Communication with a Person Represented by a Lawyer), and I intend to pursue action for that violation.

6. Collusion on efforts to replace sitting commissioners they disagree with

One aspect of collusion does not involve legal liability, and is purely a matter of policy, but nevertheless a matter which may be of significant concern to the Governor. WDFW staff found an email on Ragen's computer from Davis containing a link to an online file sharing site. WDFW staff accessed the link and found a large Excel spreadsheet that tracks and rates potential candidates for appointment to the Commission. The spreadsheet dates back to the 2023 appointments and goes through 2024. The spreadsheet is essentially a dossier on every potential candidate as well as some sitting commissioners. It includes personal, candid, and unflattering statements about individuals, including some sitting commissioners. Some comments are attributed to certain individuals, with Ragen, Rowland, and Smith mentioned as contributing to some comments or recommendations. The spreadsheet flags some candidates negatively because of the candidates' perceived "relationship with tribes." The notes flag multiple candidates as serving as a "decoy," suggesting someone sympathetic to WWF's interests while not showing outward connections to the organization. The notes evince a clear effort to go after and replace certain named sitting commissioners with whom they disagree with candidates more sympathetic to WWF's perspectives. Now that this spreadsheet is in WDFW's possession, the document is a public record and is likely to be captured within the scope of one of the pending public record requests. This spreadsheet will likely generate media attention once it is shared. I will be sending a native Excel file containing this spreadsheet along with my memo.

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7. Conclusion regarding collusive conduct

The conduct documented above shows that Smith and Rowland, along with Ragen, regularly met with and coordinated with outside advocacy groups on topics where those advocacy groups were suing the Department. While the Executive Ethics Act does not expressly address this kind of conflict because it did not include personal financial gain or self-dealing, the conduct definitely violates the Commission's Rules of Procedure. Given the level of familiarity and pattern of frequent secret meetings, their conduct also calls into question whether any of the commissioners may have leaked confidential information to the advocacy groups, which would be a statutory violation of RCW 42.52.050.

B. Second Concern: Extensive Use of Personal Accounts for Work Purposes and Noncompliance with Record Management and Public Records Act Obligations

1. Prelude: Commissioners are well-trained in record management obligations

As gubernatorial appointees, commissioners are required to take online training through the Governor's website that includes records management, Public Records Act, and Open Government Meetings Act subjects. Fish and Wildlife Commissioners receive additional trainings on a regular basis. I and my colleagues conducted extensive training, during public commission meetings, on PRA and record management obligations and best practices in 2021 and again in 2023. I provided additional private training to Rowland, Lehmkuhl, and Ragen when they were appointed in 2022. WDFW has an "Information Governance Unit" (IGU) which includes their public records officer and supporting staff, and they are always available to assist commissioners with records management and search questions.

Commissioners have been advised repeatedly against using personal email accounts and personal cell phones to text on commission-related business. Over the course of the 2023 calendar year, the Department became more aggressive on this topic, forcing all nine commissioners to accept Department-issued cell phones and laptops, whereas those assets had only been voluntarily offered to commissioners previously. Despite this Department emphasis on commissioners using official devices in 2023, Ragen's computer reveals continued use of personal texts and personal email accounts by he, Smith and Rowland.

2. The November 2022 text incident with Rowland

During a public meeting in November 2022, the Commission voted to not support further spring bear recreational hunting seasons. During the meeting discussion, Rowland, who participated remotely via Zoom, mentioned that she just received a text message pointing to an ambiguity in the motion language. She did not identify the sender of the text. In response, the Commission agreed to modify the motion language. WDFW subsequently received a public record request for that text message.

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It took extensive efforts from myself and department staff over two months of time in early 2023 to compel Rowland to produce the text message. She initially claimed she had deleted it. She then sent an email in which she merely transcribed what she said was the content of the text message, which is insufficient for compliance with the Public Record Act. Rowland then provided a snapshot of the text message, which sufficed for the public record request, but the Department also insisted that she provide a digital copy since the text formed part of the agency record for the Commission's spring bear vote. She refused to allow a digital copy to be downloaded from her phone. I complained to the Governor's office about her resistance to providing the public record, and Deputy Chief of Staff Kelly Wicker sent her a strongly worded letter demanding compliance with public record laws. It took another month of wrangling to get her to agree to provide a digital copy, which she eventually did.

3. Commissioner noncompliance with record management and public record requests—significant fiscal exposure in new U.S. Sportsmen's case

As mentioned above, U.S. Sportsmen's Alliance Foundation sued WDFW in January 2025, alleging violation of the PRA due to unreasonable delays in providing records responsive to a September 2023 request filed by Sportsmen's. The focus of that September 2023 request is commissioner communications spanning more than two years. WDFW staff provided that record request to commissioners promptly upon its receipt in September 2023. Rowland and Smith delayed offering any responsive records until after AAGs assigned to the new lawsuit directly confronted them and demanded compliance, 18 months later.

Two AAGs and WDFW records staff interviewed Rowland in early March 2025 regarding her lack of effort to produce records responsive to the September 2023 Sportsmen's request. Rowland expressly stated during this interview that she had decided she was not going to make any effort to respond to that request until she was "forced to." This admission is simply astonishing, given her background as an attorney and former federal government employee. This admission opens up the Department to significant exposure to financial penalties and attorney fees in the public records case. Only after being interviewed by AAGs did Rowland search for and produce records for the Sportsmen's request.⁶

Smith also failed to provide responsive records in a timely fashion to the Sportsmen's 2023 request. Only after being interviewed by the AAGs assigned to the case has she spent time reviewing her records and providing them to WDFW. Her excuse to the AAGs for the delay is to claim that WDFW staff doesn't provide enough support to commissioners, she is confused, and

⁶ WDFW staff report that Rowland is significantly overdue on responding to numerous other pending public record requests. Rowland did produce her copy of the August 2023 email from Davis to three commissioners, matching the copy found on Ragen's computer. Smith has not produced her copy of that same email even though she was the third recipient.

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she is not technically adept to be able to understand and manage her records. On face value, this admission proves incompetence to serve as a commissioner. If she cannot engage in the basic function of managing her own emails, texts, and documents that she receives or creates as part of her role as a commissioner, and reviewing and producing those records in response to public record requests, she creates significant liability to the Department.⁷

4. Further liability concerns over record management and use of personal devices for commission work, especially personal text messages, including vote counting in violation of the Open Public Meetings Act

Ragen's laptop reveals extensive use of personal emails between Ragen, Rowland, and Smith. Smith appears to have used at least three separate private email accounts for commission-related work, including an account under her husband's name. Ragen also extensively texted with them using personal cell phones. It appears that Smith may have also used her husband's phone in some of the text communications.

Ragen's laptop shows extensive email communications between himself, Smith, Rowland, and Lehmkuhl in 2023, with these emails referring to the group as the "gang of four." These emails used Roland, Smith, and Lehmkuhl's personal emails. Many of those emails regarded hatchery policy, which topic has been the subject of multiple public record requests as well as litigation, and WDFW believes commissioners may not have produced copies of all responsive personal emails in response to prior public record requests.

Ragen appears to have attempted to comply with record management responsibilities before he left his position, at least partially, because he took screenshots of numerous work-related texts on his personal phone and forwarded those screenshots to his WDFW email account, which is where WDFW staff recently found them. Despite this newly-found evidence of several commissioners extensively using personal texts to conduct agency business, none of the participating commissioners have previously provided to WDFW any text messages in response to any prior public record request, and commissioner records have been subject of many dozens of public record requests over the past three years.

Rowland was adamant during the aforementioned "text incident" that her receipt of that text during the November 2022 meeting was a "one-off" circumstance, and that that she does not use her personal cell phone for agency business. Smith and other commissioners have similarly claimed multiple times that they do not use their personal phones to text for agency business, other than purely transitory messages such as arranging dinner plans when they are in town for a commission meeting. These claims are disproven by various text exchanges captured on Ragen's

⁷ WDFW staff are still reviewing the records just turned in by Smith and Rowland for the Sportsmen's request to determine just how many "gaps" there are between what they've produced, versus what records were found on Ragen's computer that had included Smith and Rowland as recipients or senders.

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computer. In particular, Ragen, Smith, and Rowland engaged in extensive text messaging in December 2023 when the Commission voted on the vice-chair position, and Ragen successfully challenged incumbent Molly Linville. These texts discuss how many votes they have in support of Ragen's candidacy, and expressly detail efforts to reach out to other particular commissioners in advance of the meeting to lobby and garner five votes. This effort is one example of several communication chains on personal devices that evidence an intent to count votes, or otherwise use serial communications to influence action by more than a quorum of commissioners. These records suggest an intent to violate the Open Public Meetings Act.

All of the text chains mentioned above regarding the vice chair vote are responsive to a separate open public record request which has been pending since January 2024, yet Smith and Rowland have never offered WDFW their personal text records that correspond to the communications they had with Ragen on the topic.⁸ They either deleted the texts after sending them in December 2023, which would be a violation of legal record retention obligations, or they are refusing to provide the records in response to the pending public records request, which is a separate violation of law.

5. Conclusion Regarding Record Management Issues

The evidence documented above shows that Smith and Rowland, significantly more than any other current commissioner, are using personal emails and texts to engage in business, which records they have been unwilling and uncooperative to provide in response to public record requests. This issue aligns with the first area of concern addressed in this memo—collusion—because they appear intent on hiding their associations and coordination with outside advocacy groups, even if doing so violates record retention and public record obligations.

WDFW is still gathering and reviewing records from Ragen's computer, as well as gathering further records for the Sportsmen's PRA lawsuit. WDFW has many other open public record requests that it has not yet reviewed under a microscope for commissioner compliance, which review is called for because of what WDFW has discovered in the course of defending the Sportsmen's litigation. Given the findings thus far, it is reasonable to expect the Department may locate additional evidence of noncompliance with record management and record production. WDFW is limited, however, in verifying compliance, so long as commissioners continue using personal devices surreptitiously to conduct agency work. WDFW has no legal means of accessing commissioners' personal devices to search for responsive records, and WDFW must therefore rely upon the sincerity and integrity of each commissioner in locating and providing their records.

⁸ Smith and Rowland submitted electronic "search declarations" for that record request regarding the vice chair topic, attesting that they searched and found no responsive records on their personal devices.

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C. Highly Suspicious and Concerning Compensation Claims from Smith

Fish and Wildlife Commissioners serve as part-time volunteers, but they are eligible for reimbursements and a small stipend for time spent in their official capacity. RCW 77.04.060 provides that commissioners may receive compensation under RCW 43.03.250. That statute allows a commissioner “to receive compensation in an amount not to exceed one hundred dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group.” RCW 43.03.250(2). WDFW has an online claim form where commissioners can check a box and say that they performed official work for at least an hour of any day, and they will receive the \$100 payment for that day.

From January 1, 2024, through February 2025, Smith has claimed compensation for every day of the year including holidays and every weekend, except only Christmas, New Years, and five other days. She has submitted these compensation claims even for days where she had emailed the executive assistant saying that she was travelling, or on vacation, or tied up in personal engagements and would be unavailable for commission business. The amount of compensation claimed by Smith in this time period is over two times the amount of time claimed by Chair Baker, who has significantly more responsibilities as the Commission Chair. WDFW staff and senior management have had concerns with the number of days for which Smith has claimed compensation. WDFW staff have raised these concerns with Chair Baker, and Commissioner Smith, but no change has resulted.

If Smith is claiming compensation for days where she is not actually engaging in “statutorily prescribed duties” as a commissioner, such claims may constitute theft. There are no records showing what official work Smith was allegedly conducting for all the days claimed over the past 14 months. These claims of daily commission work are particularly egregious considering how little prior effort Smith was making towards locating and producing her personal records responsive to public record requests. This compensation claim issue is a separate and concerning element of Smith’s conduct as a commissioner that highly suggests misconduct and malfeasance, if not outright criminal theft for claiming compensation for days when she likely did not actually perform any official, statutory duties as a commissioner.

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CONCLUSION

The commissioner conduct described above is creating significant legal liability to the Department, particularly in the area of public records litigation. The collusive conduct described above is a significant contributing cause for the high level of commission dysfunctionality noted in the Ruckelshaus Report. Many of the records revealing the concerning behavior are responsive to pending public record requests and are going to eventually be seen by the public, and likely covered by the media once the records are out. The Governor needs to be aware of these issues and decide whether they warrant action under the Governor's authority. I and WDFW staff can provide any supporting documentation referenced within this memo, upon request.

JVP/def
Attachment
Enclosure

ATTORNEY-CLIENT PRIVILEGED

ATTACHMENT A

Cases litigated by Claire Davis against WDFW between 2017 – present.

Plaintiff(s) & venue	Date range	Topic
Center for Biological Diversity & Cascadia Wildlands. Thurston Superior	9/2017 - 10/2018	Challenges lethal wolf removal
Center for Biological Diversity. Thurston Superior	11/2017 - 2/2019	Public Records case
Protect Zangle Cove. Thurston Superior & Div. II	4/2018 - 7/2022	Challenges HPA exemption
Center for Biological Diversity. Thurston Superior & Div. II	5/2018 - present	Challenges bear removal permits for timber damage
Center for Biological Diversity. Thurston Superior	8/2018 - 3/2019	Challenges lethal wolf removal
Center for Biological Diversity. Thurston Superior	11/2018 - 9/2020	Challenges lethal wolf removal
Huskinson. King Superior & Div. I.	8/2019 - 12/2020	Challenges lethal wolf removal
Hall & Stroble. Thurston Superior & Div. II	12/2020 - 9/2022	Challenges 2021 spring bear hunting rule
Wild Fish Conservancy & The Conservation Angler. King Superior	10/2021 - present	Challenges Commission vote to increase Chinook hatchery production (hereinafter the “Chinook SEPA” case)
Washington Wildlife First. Thurston Superior	4/2023 - 2/2025	Challenges Commission approval to buy land for Deschutes hatchery
The Conservation Angler, Wild Fish Conservancy, & Washington Wildlife First. Thurston Superior	11/2023 - present	Challenges Commission vote approving co-manager hatchery policy
Washington Wildlife First. Thurston Superior	11/2024 - present	Challenges Commission vote to delegate Colville Tribe MOU negotiation to Director

Note: Wild Fish Conservancy has filed numerous other cases against WDFW using law firm Kampmeier & Knutzen. Some of those cases are also active, but they are not listed since they do not involve Claire Davis.

ATTORNEY-CLIENT PRIVILEGED**ATTACHMENT B**

Calendar meetings where Davis is shown as a scheduled attendee with commissioners

Date	Attendees	Meeting subject
3/10/22	Tim Ragen, John Lehmkuhl, Claire Davis	Upcoming Issues
5/13/22	Tim Ragen, Melanie Rowland, Lorna Smith, Samantha Bruegger (WWF Ex.Dir), Claire Davis	Rule
6/22/22	Tim Ragen, Claire Davis	Discussion
7/7/22	Tim Ragen, Lorna Smith, Melanie Rowland, John Lehmkuhl, Samatha Bruegger, Claire Davis	Wolves
8/3/22	Tim Ragen, Lorna Smith, Melanie Rowland, Samatha Bruegger, Claire Davis, Kurt Beardslee (WFC), Emma Helverson (WFC)	Commissioners/WWF
8/17/22	Tim Ragen, Lorna Smith, Melanie Rowland, Samatha Bruegger, Claire Davis, Kurt Beardslee (WFC), Emma Helverson (WFC)	Hatchery/Commission Follow-up
10/6/22	Tim Ragen, Lorna Smith, Melanie Rowland, John Lehmkuhl, Samatha Bruegger, Claire Davis	Pre-Commission Meeting Check-in
10/24/22	Tim Ragen, Lorna Smith, Melanie Rowland, John Lehmkuhl, Samatha Bruegger, Claire Davis	Pre-Colville Catch-up
1/12/23	Tim Ragen, Rachel Haymon, David Linn, Josh Rosenau, Dan Paul, Samantha Bruegger, Claire Davis, Carey Morris	SB 5613
1/20/23	Tim Ragen, David Linn, Dan Paul, Josh Rosenau, Samantha Bruegger, Claire Davis, Carey Morris, Bob McCoy	New Approach to 5613
3/3/23	Tim Ragen, Samantha Bruegger, Claire Davis	Tim Ragen
3/7/23	Tim Ragen, Samantha Bruegger, Claire Davis	[blank]
3/12/23	Tim Ragen, Melanie Rowland, Samantha Bruegger, Claire Davis	Zoom
4/17/23	Tim Ragen, Woody Myers, Lorna Smith, Samantha Bruegger, Claire Davis	Commissioner Meeting
5/8/23	Melanie Rowland, Tim Ragen, Woody Myers, Lorna Smith, Claire Davis, Samantha Bruegger	Commissioner Meeting
7/21/23	Woody Myers, Tim Ragen, Lorna Smith, Melanie Rowland, Claire Davis	Meet w/ outside participant and then go over structured decision making process
8/30/23	Tim Ragen, John Lehmkuhl, Claire Davis, Amaroq Weiss, Sophia Ressler	Wolf Rulemaking Petition
10/3/23	Tim Ragen, Amaroq Weiss, Claire Davis, Adrian Treves	Meeting
11/7/23	Tim Ragen, Adrian Treves, Jeff Ruch, Timothy Whitehouse, Claire Davis, Amaroq Weiss	[blank]
12/1/23	Tim Ragen, Melanie Rowland, Lorna Smith, Wendy Keefover, Claire Davis	Discuss bear/cougar petition