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U.S. House of Representatives
Committee on Agriculture
Room 1301, Longworth House Office Building
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April 12, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator McCarthy:

We write today regarding the recent controversy surrounding the U.S. Environmental Protection Agency's (EPA) $3 million cooperative agreement with the Northwest Indian Fisheries Commission.[1] EPA financial assistance was used to fund an advocacy campaign attacking farmers and ranchers and blaming them for water pollution in Washington state. The advocacy campaign includes billboards, bus placards, and a website that encourages the public to contact their state lawmakers using a pre-written email.[2] The billboards and placards do not include a required disclaimer citing EPA as the campaign's funding source.[3] Further, according to a recent news report, EPA has acknowledged that the use of EPA financial assistance to fund this campaign was a violation of federal law.[4] We write to request documents and information on how EPA plans to address these specific violations, as well as how EPA conducts oversight of grant recipients.

Both the Northwest Indian Fisheries Commission and one of its subaward recipients, the Swinomish Indian Tribal Community, used EPA funds to partner with environmental activist groups and finance an advocacy campaign called "What's Upstream."[5] The campaign includes billboards that state, "Unregulated agriculture is putting our waterways at risk," and direct the public to a campaign website.[6] The

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[1] U.S. Environmental Protection Agency, Cooperative Agreement PA-00J32201, December 28, 2010, http://blogs.nwifc.org/psp/files/2009/01/PA-00J32201-0.pdf.
[2] Don Jenkins, "EPA: Anti-farmer billboards violate agency rules," *Capital Press*, April 1, 2016, available at: http://www.capitalpress.com/Washington/20160401/epa-anti-farmer-billboards-violate-agency-rules.
[3] *Id.*
[4] Don Jenkins, "EPA: What's Upstream is a misuse of federal funds," *Capital Press*, April 5, 2016, available at: http://www.capitalpress.com/Washington/20160405/epa-whats-upstream-is-a-misuse-of-federal-funds.
[5] http://whatsupstream.com/#footer
[6] Jenkins, *supra* note 2.

billboards do not identify EPA as the source of their funding. The website, however, does include a disclaimer at the bottom of the page stating that the project has been funded by the EPA. Meanwhile, a button at the top of the page urges the public to "Take Action!" by sending a pre-written email to their state senators encouraging increased regulation of the agriculture industry.

While this advocacy campaign is troubling, we are even more concerned that it appears to be part of a broader pattern of mismanagement of federal funds at EPA. The cooperative agreement with the Northwest Indian Fisheries Commission is one of many awarded as part of EPA Region 10's Puget Sound Action Agenda.[7] In July of 2014, the EPA's Office of Inspector General (OIG) released a report calling for greater oversight of these cooperative agreements. In that report, the EPA OIG expressed concern that "a lack of systematic oversight of activities for cooperative agreements with subawards...potentially puts federal funds at risk."[8] EPA OIG was specifically concerned that EPA's Region 10 project officers relied heavily on cooperative agreement recipients to ensure any subawards they made were in compliance with terms and conditions of federal financial assistance without reviewing monitoring records or ensuring recipients were aware of their subaward monitoring expectations.[9] Notably, only three of the nine cooperative agreements with subawards had a monitoring policy containing a required provision advising subaward recipients that using those funds for lobbying activities is prohibited.[10]

A separate but related issue involves an ongoing oversight investigation by the Senate Committee on Environment and Public Works (EPW) of the EPA's "Waters of the United States" (WOTUS) rulemaking. Pursuant to that investigation, on December 14, 2015, the Government Accountability Office (GAO) issued a legal decision related to EPA's use of social media during the rulemaking. GAO found that EPA violated anti-lobbying restrictions by using hyperlinks on the EPA website to connect visitors with external websites run by environmental activists that urged the public to contact Congress in support of the WOTUS rule.[11] GAO also found that EPA engaged in "covert propaganda" by using a platform called Thunderclap to promote a pro-WOTUS message without identifying itself as the source.[12]

When viewed in context with the EPA OIG report and the recent GAO legal decision, the "What's Upstream" campaign seems to be merely the most recent indicator of a lack of

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[7] U.S. Environmental Protection Agency, Cooperative Agreement PA-00J32201, December 28, 2010, http://blogs.nwifc.org/psp/files/2009/01/PA-00J32201-0.pdf.
[8] U.S. Environmental Protection Agency: Office of Inspector General, *EPA Should Improve Oversight and Assure the Environmental Results of Puget Sound Cooperative Agreements*, Report No. 14-P-0317, at 13.
[9] *Id.* at 9-13.
[10] *Id.* at 10.
[11] U.S. Government Accountability Office, *Environmental Protection Agency – Application of Publicity or Propaganda and Anti-Lobbying Provisions*, Decision B-326944, December 14, 2015.
[12] *Id.*

appropriate oversight at EPA. In order to better understand EPA's oversight of grant recipients and what corrective action is necessary to resolve what appear to be systemic problems at the agency, we request that EPA respond to the following questions:

1. A recent news report quotes an EPA spokesman saying the agency is "in the process of correcting" the misuse of EPA funds for the "What's Upstream" campaign.[13]

    a. What action has EPA taken to date and what is its corrective action plan going forward? Please include a projected time frame for any planned future measures.

    b. Has EPA cut off funding for the Northwest Indian Fisheries Commission cooperative agreement pending an investigation of this violation? Will EPA attempt to recoup the funds misspent on the "What's Upstream" campaign?

    c. Will Northwest Indian Fisheries Commission or the Swinomish Indian Tribe be disqualified from receiving future EPA financial assistance as a result of this violation?

2. In September 2015, the Swinomish Indian Tribe reported its projects had been delayed "as a result of extensive reviews and engagement by EPA."[14] Were EPA staff in direct contact with the subaward recipient? Please provide all documents and communications, including emails, between and among employees of EPA, Northwest Indian Fisheries Commission, and the Swinomish Indian Tribe related to the "What's Upstream" campaign.

3. EPA responded to the EPA OIG's 2014 report with a series of intended corrective actions. According to the EPA response, each should have been completed by the final quarter of 2015. Did EPA complete all of those objectives?

    a. If so, what were the findings of the planned review of existing grant management policies, guidance and regulations? Were updates or clarifications made? Please provide copies of the original documents, as well as any updated versions resulting from the EPA OIG recommended review.

    b. EPA promised to develop training materials and conduct training sessions on cooperative agreement recipients' subaward monitoring responsibilities.

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[13] *Id.*

[14] EPA Puget Sound Financial and Ecosystem Accounting Tracking System (FEATS), September 30, 2015, available at: http://blogs.nwifc.org/psp/files/2016/02/Swinomish-FY12-4.1.15-9.30.15.pdf.

Was that training program implemented in 2014 as planned? If so, please provide the committee with copies of any training materials used.

4. In 2014, EPA dismissed the EPA OIG's concern that lack of oversight of EPA's Puget Sound program put federal funds at risk. Has EPA reconsidered its position in light of recent events?

5. Does EPA plan to review Region 10's current grant management policies and procedures to look for ways to strengthen oversight and better protect federal funds? If so, when do you expect such a review to be complete?

6. Does EPA periodically audit regions to evaluate compliance with federal regulations governing EPA grants? If so, how often, and what were the results of Region 10's most recent evaluation?

In case we should need to request additional documents and so that a full and complete record of those documents can be produced to the Committee in response to pending and future requests, please:

1. Preserve all e-mail, electronic documents, and data ("electronic records") **created since January 1, 2009** related to the award and management of EPA Region 10's cooperative agreement with the Northwest Indian Fisheries Commission. For the purposes of this request, "preserve" means taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of electronic records, as well as negligent or intentional handling that would make such records incomplete or inaccessible;

2. Exercise reasonable efforts to identify and notify former employees and contractors, subcontractors and consultants who may have access to such electronic records that they are to be preserved; and,

3. If it is the routine practice of any agency employee or contractor to destroy or otherwise alter such electronic records, either halt such practices or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production if requested.

The Committee on Agriculture is the principal authorizing committee for all matters related to agriculture in the House of Representatives and "shall have general oversight responsibilities" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

Please provide the requested documents and information on or before April 29, 2016. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 1301 of the Longworth House Office Building and the Minority

Staff in Room 1010 of the Longworth House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Emily Wong of the majority staff at 202-225-2171. Thank you for your attention to this matter.

Sincerely,

K. Michael Conaway
Chairman

Encl.

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page PDF files.

   (b) Document numbers in the load file should match document Bates numbers and TIF or PDF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 1301 of the Longworth House Office Building and the Minority Staff in Room 1010 of the Longworth House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-

office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.